

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
 FOR THE COUNTY OF YAVAPAI

2012 MAR -7 AM 8:56

SANDRA K. MARKHAM, CLERK  
 BY: Jacqueline Harshman

STATE OF ARIZONA, )

Plaintiff, )

vs. )

JAMES ARTHUR RAY, )

Defendant. )

Case No. V1300CR20108-0049

Court of Appeals

Case No. 1 CA-CR 11-0895

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE WARREN R. DARROW  
 ORAL ARGUMENT/EVIDENTIARY HEARING  
 RE PENDING MOTIONS DAY TWO

NOVEMBER 10, 2010

Camp Verde, Arizona

**ORIGINAL**

REPORTED BY  
 MINA G. HUNT  
 AZ CR NO. 50619  
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
2 FOR THE COUNTY OF YAVAPAI  
3  
4 STATE OF ARIZONA, )  
5 Plaintiff, )  
6 vs ) Case No. V1300CR20108-0049  
7 JAMES ARTHUR RAY, ) Court of Appeals  
8 ) Case No. 1 CA-CR 11-0895  
9 Defendant )

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AZ CR NO. 50619  
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Mina G. Hunt (928) 554-8522

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1 Proceedings had before the Honorable WARREN R.  
2 DARROW, Judge, taken on Wednesday, November 10,  
3 2010, at Yavapai County Superior Court, Division  
4 Pro Tem B, 2840 North Commonwealth Drive,  
5 Camp Verde, Arizona, before Mina G. Hunt, Certified  
6 Reporter within and for the State of Arizona.  
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## PROCEEDINGS

THE COURT: Back on the record in State versus James Arthur Ray. Mr. Ray has waived his appearance for this hearing. Present on his behalf are Ms. Do, Mr. Li and Mr. Kelly. Also note that Ms. Seifter is present. I guess Ms. Seifter has not yet been admitted the pro hac vice. Is that correct.

MR. KELLY: That's correct. We have submitted the application about a week and a half ago. We're waiting for the approval. I'm certain it's going to be approved, based on my experience.

THE COURT: Okay. And Ms. Polk is here representing the state.

MS. POLK: Yes, Your Honor.

THE COURT: The witness is in the courtroom. Ma'am, please come forward and take the seat there at the witness stand. Good morning.

THE WITNESS: Good morning.

THE COURT: Miss Mercer has returned to the witness stand.

Ma'am, you're still under oath for all of this proceeding. You understand that?

THE WITNESS: Yes.

THE COURT: Ms. Polk, when you're ready.

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MS. POLK: Thank you, Your Honor.

DIRECT EXAMINATION (Continued)

BY MS. POLK:

Q. Good morning, Miss Mercer.

A. **Good morning.**

Q. Yesterday I believe where we left off you had talked a little bit about some incidents in 2008. Did you -- can you tell the Court whether or not you noticed a difference between the sweat lodge ceremony performed by James Ray in 2007 and 2008 compared to 2009?

A. **Yes.**

Q. And in what way was it different?

A. **In 2007-2008 people came in and out more frequently. In 2009 they stayed in and fewer came out.**

Q. And in 2009 you testified you had a spot right next to the door; is that correct?

A. **Yes.**

Q. Could you hear things going on inside the sweat lodge in 2009?

A. **Mostly only when the door was open. When the door is closed, it's muffled. But -- you know -- I can hear the essence of what's going on.**

Q. And in your position by the door, did you

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hear James Ray in 2009 say things to participants to encourage them to stay in?

MS. DO: Your Honor, may I object based upon the Court's ruling yesterday regarding the scope of this hearing?

THE COURT: And I went back and read the brief and the notes I'd made originally on November 2. And what I'd stated at the outset I think when I was addressing Mr. Li, both Mr. Kelly and Mr. Li, addressed the issue.

But I what I said at the outset had to do with the need for a court to know what the alleged facts are in the present case. The state's obligated to show similarity, has to show that.

So in terms of the scope of the hearing, what happens -- what has happened allegedly in the present matter is relevant. And at this point sorting that out is somewhat difficult until I actually have had a chance to consider what the facts are to some degree of proof in the present matter and then look over evidence of prior acts. It's hard to make a comparison.

So at this time I'm going to overrule the objection.

You may answer.

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MS. POLK: Do you remember the question?

THE WITNESS: No.

Q. BY MS. POLK: I believe my question was what did you hear James Ray say to participants in 2009 with respect to staying inside the sweat lodge?

A. **He definitely encouraged, strongly encouraged, them to stay in. He said things like you're above that. You're not your body. You're more than your body. And specifically saying to people -- you know -- you don't have to leave -- you know -- stick it out. You're tough. Things like that.**

Q. Did you notice similarities between the 2009 sweat lodge ceremony and the ceremonies in 2007 and 2008?

A. **In regards to?**

Q. First let's talk about the number of people coming out sick.

A. **Well, there was always people coming out sick. In 2009 the less total number people came out, and James actually in 2009 asked them from the tent to come back in.**

**2008 a lot of people came out sick. A lot would come out, get water, get cooled off and**

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1 go back in. And in 2009 I think maybe one or two  
2 people did that. But in 2007-2008 people were  
3 encouraged to go out and cool off and go back in.  
4 If you need water, go outside. But then they'd  
5 come back in.

6 You know -- it took a while in between  
7 rounds because so many people were going out and  
8 coming back. It was almost as long as a round was  
9 where people would come in and out.

10 Where in 2009 -- you know -- only a  
11 couple would come out each round. And they didn't  
12 come out on their own. They were dragged out.  
13 Most of the ones that came out were in much worse  
14 shape than in 2007 and 2008, in my opinion.

15 Q. In 2009 did you observe anybody trying to  
16 push a lady to go back in?

17 A. Yes. And that's the first time I'd seen  
18 that happen. Because usually it's -- in the  
19 traditional sweat lodge, if you need to leave, you  
20 leave and that's okay, and you can stay outside.

21 And in 2007 and eight people did go back  
22 in and out. But if they stayed out, that was fine.

23 But in 2009 one lady came out about the  
24 second round. And she was pretty upset and more  
25 upset and crying because she was letting James

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1 down -- you know. She wasn't --

2 MS. DO: Objection, Your Honor. Foundation.

3 THE COURT: I don't know if this is based on a  
4 direct observation or what. So sustained.

5 Q. BY MS. POLK: Without telling us why she  
6 was upset, just tell us what you observed.

7 A. She was very upset, crying, distraught,  
8 shaking. And then the Dream Team was there talking  
9 with her. And by the -- I think about the fifth  
10 round she said she wanted to go back in.

11 But then she got up and said no. I don't  
12 want to go back in. They got her to -- she stood  
13 up and sat back down a couple times, then they  
14 walked her. There was one on each side. They  
15 walked her to the door and got her to the door.  
16 And she said no. I can't go in. They're pushing  
17 her in, and she said no, no, no.

18 And then she got down on her knees and  
19 said no. Again they're pushing her. Then I walked  
20 away. But I don't think she went in. But I'd  
21 never seen anyone try to -- you know -- push  
22 someone in like that before.

23 Q. Around the fifth round of the 2009 sweat  
24 lodge ceremony, did you observe a man yelling?

25 A. Say that again.

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1 Q. Around -- we're talking about the 2009  
2 sweat lodge incident. Around the fifth round did a  
3 man come out yelling from the lodge?

4 A. He said he was having a heart attack. He  
5 came out and was in distress and was laying on the  
6 ground for a while -- you know -- a minute or so  
7 and then started yelling that he thought he was  
8 having a heart attack. He was screaming at the top  
9 of his lungs I'm going to die. I don't want to  
10 die. I'm having a heart attack.

11 Q. Did you hear James Ray respond to that  
12 man's yelling?

13 A. Yes.

14 Q. What did you hear him say?

15 A. Well, first he asked who was out there  
16 yelling. His tone appeared to be annoyed because  
17 the guy was yelling and everyone could hear it. It  
18 seemed like people were getting concerned.

19 So first he wanted to know who it was.  
20 Once he found who it was, he called him by name and  
21 said you're more than that. You're not your body.  
22 And then he -- the guy kept screaming. And James  
23 said it's a good day to die. Just go with it.  
24 Things like that.

25 Q. Do you remember the name of the man who  
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1 was screaming?

2 A. No. I don't know their names. And most  
3 of them shaved their heads. So I don't know if I'd  
4 even recognize or know a lot of the people today.

5 Q. In 2009 how many people would you say you  
6 pulled out of the sweat lodge before it ended?

7 A. Maybe 10, 8 to 10. Me personally?

8 Q. Yes. Eight to 10 before it ended?

9 A. Yeah.

10 Q. And in your position where you sat by the  
11 door, did you hear any discussion inside about  
12 people being unconscious?

13 A. Yes.

14 Q. Tell The Court what you heard. First  
15 tell the Court who you heard speaking.

16 A. I don't know who it was. I could just  
17 give kind of general direction -- you know -- from  
18 what I could tell. At one point I heard him say --  
19 someone towards the back left said that someone was  
20 unconscious. Well, there was -- every round it  
21 came out that people were unconscious.

22 But someone said someone is unconscious.  
23 And James said that's okay. She's been down this  
24 road before. She's fine. She knows what she's  
25 doing.

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1 And then another -- I don't know if it  
2 was the same round or not. On the other side -- it  
3 was in the back again. But on the right side or  
4 towards the middle somebody said James, so and so  
5 are unconscious. And he said really? They're not  
6 breathing? And they said -- it was a guy. And  
7 they said yes. He said they're where they're  
8 supposed to be. They'll be fine till the next  
9 round or we've got one more round or something to  
10 that effect.

11 Q. When the sweat lodge was over in 2009,  
12 did everybody come out?

13 A. No.

14 Q. What did you do when it was over?

15 A. Well, after all the people came out, when  
16 we got them all out, I looked back inside and I saw  
17 that there were still people in there.

18 Q. Why did you look back inside?

19 A. I don't know. I just did. I just did.

20 Q. What did you see when you looked back  
21 inside?

22 A. I saw -- I couldn't quite tell, but it  
23 looked like three people laying in the back of the  
24 sweat lodge all the way in the far back of the  
25 sweat lodge.

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1 Q. What did you do then?

2 A. I looked at James, and I said James.  
3 There is still people in there. I need some help.  
4 And then I looked around realizing -- I looked back  
5 in there again and saw -- I could see that there  
6 was two men and they were big. And I knew it would  
7 be really hard to drag them out even -- you know --  
8 if I had help because you have to bend over to be  
9 in there.

10 So I said James, can I open the back of  
11 the sweat lodge? And he said no. Only if it's  
12 absolutely necessary. It's sacrilegious. And I  
13 looked in again. I can't do this. So I just went  
14 around and started taking up the back of the sweat  
15 lodge.

16 Q. And then what did you do?

17 A. Well, I couldn't get it all up by myself  
18 because it's tarp upon tarp and -- you know --  
19 they're overlapping. And I couldn't pull it up so  
20 I started yelling for help, for someone to come  
21 help me lift up the tarps.

22 Q. Did you get help?

23 A. Yes. My daughter came over and another  
24 guy who was sitting on the side came over and  
25 helped us lift up the tarp. And we saw three

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1 people laying there unconscious.

2 Q. Did you drag those three people out?

3 A. Yes.

4 MS. DO: Your Honor, object to the continuing  
5 line of inquiry. We've now gone beyond what the  
6 Court needs.

7 THE COURT: And, Ms. Polk --

8 MS. POLK: Your, Honor I can --

9 THE COURT: The idea is, I believe, to  
10 indicate how a fact can be inferred from a prior  
11 act, has the appropriate relationship to a fact at  
12 issue. And there is an element of the scope of the  
13 hearing here. And how is that relevant when you  
14 look at the analysis that has to be done under  
15 404(b)?

16 MS. POLK: Your Honor, it's relevant because  
17 the Court has heard part of the story about the  
18 2005 incident involving Daniel Pfankuch. What the  
19 Court will hear further on in this hearing is that  
20 Daniel Pfankuch at the end of the ceremony did not  
21 want to come out. It was his wife who eventually  
22 pushed and pulled him out. But if not for the  
23 wife, he too would have stayed and probably  
24 suffered the same fate as the victims in this case.

25 THE COURT: And you're saying that that --

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1 Ms. Do?

2 MS. DO: Your Honor, I think the Court has  
3 heard through Ms. Polk's articulation of the  
4 state's theory, and we heard much yesterday about  
5 the 2009. I think based upon the record, the Court  
6 does have an idea what the state alleged occurred  
7 on October 8, 2009,.

8 The purpose of this hearing, again, is to  
9 go back to what they alleged occurred in 2003 to  
10 2008 and to see if the state can produce clear and  
11 convincing evidence to convince this Court that  
12 those acts did, in fact, occur and that Mr. Ray  
13 committed them.

14 I think at this point we are going  
15 beyond -- I imagine my cross-examination is going  
16 to, essentially, turn today into another minitrial.  
17 I think it's gone beyond the scope.

18 THE COURT: Let's try to analyze this.

19 Ms. Polk, you're saying that you're going  
20 to show in 2005 with Mr. Pfankuch there was some  
21 act by Mr. Ray that would be relevant to the  
22 present case? Is that what you're saying?

23 MS. POLK: Yes, Your Honor.

24 THE COURT: And what is that act from 2005 and  
25 Mr. Pfankuch? What is the specific act that you

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1 want to show now?

2 MS. POLK: That at the conclusion of the  
3 ceremony in 2005 Mr. Ray leaves, and inside is  
4 still one of the participants. It's Daniel  
5 Pfankuch. That if his wife had not been with  
6 him -- her testimony will be at trial that Daniel  
7 is left in the sweat lodge. He's in a state of  
8 distress. He doesn't want to come out. And he was  
9 not going to come out if she did not manage to pull  
10 and push and drag him out.

11 What Mr. Ray did at the conclusion of the  
12 2005 sweat lodge was he left. He went outside and  
13 was not taking care of his participants.

14 That is not only similar but that's  
15 identical to what happens in 2009 when the sweat  
16 lodge ceremony concludes. Mr. Ray leaves, and but  
17 for Miss Mercer looking in the sweat lodge and  
18 seeing the three people still there, what she will  
19 testify or what the evidence would show is that of  
20 the three people she pulls out, two die. They  
21 are -- they're pronounced dead at the scene  
22 eventually. A third one does survive. It's not  
23 only similar, Your Honor. It's identical to what  
24 happened in 2005 with Daniel Pfankuch.

25 THE COURT: And how do you relate that to one  
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1 of the purposes that would be proper under 404(b)  
2 where you talk about intent? You mentioned intent.  
3 Even though intent is not an element technically of  
4 the charge, but you mention intent. You cited  
5 cases talking about knowledge, other things that  
6 can be shown under 404(b), modus operandi.

7 What is the purpose, the specific factual  
8 link that you're talking about? You're saying --  
9 when you talk about there is a similarity to this  
10 conduct, what purpose does it go directly to?

11 MS. POLK: Your Honor, it goes to show the  
12 requisite mental state of the crime that Mr. Ray is  
13 charged with, which is manslaughter. I did bring  
14 cases for the Court today. When 404(b) references  
15 legitimate purposes for offering evidence about  
16 acts, it list intent as one of those purposes.

17 What the cases say is intent as used in  
18 404(b) refers to the requisite mental state. It's  
19 synonymous with the mental state or mens rea. So  
20 it doesn't mean intent as intentional. It means  
21 what's the level of intent? What's the mental  
22 state that the state has to prove for the  
23 underlying charge.

24 And the two cases I brought for the  
25 Court, one is a second degree murder case where

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1 it's the State versus Woody case. And in that case  
2 the defendant drove the wrong way drunk on a road  
3 down in Tucson, and he hit someone head on and  
4 killed them. The state charged -- or he was  
5 indicted by the grand jury with second degree.

6 THE COURT: I looked at that case this  
7 morning. Both of you cited it originally. I know  
8 that the defense did.

9 MS. POLK: Right.

10 THE COURT: So I looked at that specific case  
11 this morning.

12 MS. POLK: And the defendant in that case is  
13 charged with second degree murder. The requisite  
14 mental state on second degree was that the state  
15 had to show extreme indifference to human life.  
16 That was the purpose that the state was offering  
17 the prior DUI conviction for was to show the intent  
18 or the mens rea, which in a second degree case --  
19 second degree charge is reckless indifference to  
20 human life under the theory charged.

21 And the Court let it in to show that  
22 intent. The Court also -- on appeal the Court  
23 recognized that that prior conviction in Woody  
24 showed not only the requisite mental state of  
25 extreme indifference to human life, but it also let

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1 it in because it shows knowledge of the  
2 consequences of somebody's act.

3 The second case I brought for the Court  
4 is the State versus Villalobos case, which is a  
5 2010 case out of the Arizona Supreme Court. It was  
6 a death penalty case where the defendant was  
7 charged with -- and I can give you a copy of the  
8 case, Your Honor. But the defendant was charged  
9 with first degree murder and child abuse.

10 And in that case again the Court admitted  
11 prior acts of abuse by the defendant toward the  
12 victim, who was a five-year-old stepdaughter named  
13 Ashley. He, essentially, beat her to death. And  
14 he was charged with first degree murder.

15 The Court allowed in, I believe, four  
16 prior acts. They were not convictions but four  
17 prior episodes where he had hit her or bruised her  
18 or otherwise physically abused her.

19 And the Court let that in to show the  
20 requisite mental state, which in the first degree  
21 murder case was intentionally or knowingly.

22 But it's clear from those cases that when  
23 intent is used in 404(b), it is synonymous with the  
24 requisite mental state or the mens rea.

25 And so just as in Villalobos, the prior  
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1 acts showed the mental state of knowing or  
2 intentional. And just as in Woody, the prior act  
3 showed the mental state of extreme indifference to  
4 human life.

5 In this case the defendant is charged  
6 with manslaughter. The requisite mental state is  
7 recklessly. And that's why all of these are  
8 relevant. Because the prior acts show the  
9 defendant's disregard, his -- and again I'll pull  
10 up the language since reckless is such a long  
11 definition. But the state has to show the  
12 substantial disregard --

13 THE COURT: I'm aware of and consciously  
14 disregards, substantial and significant risk,  
15 something to that effect. And there is a  
16 definition of how far the deviation has to be from  
17 expected conduct for it to get to that standard.

18 MS. POLK: Yes. The state has to show a  
19 substantial -- that the defendant was aware of and  
20 consciously disregards a substantial and  
21 unjustifiable risk that the result will occur and  
22 that the disregard of the risk constitutes a gross  
23 deviation from the standard of conduct that a  
24 reasonable person would observe in the situation.

25 And that's how we prove that the  
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1 defendant acted recklessly. In other words, I made  
2 this argument yesterday. But what separates what  
3 happened in 2009, what distinguishes it from a  
4 tragic accident and makes it a crime?

5 The answer is this state of recklessness.  
6 Having gone through the sweat lodges in 2005, 2007,  
7 2008, having had -- being made aware of what  
8 happens to people when you expose them to extreme  
9 heat, aware of that risk, chooses to consciously  
10 disregard it and then conducts a sweat lodge in  
11 2009 that is even hotter, more intense, puts more  
12 pressure on his participants to stay inside.

13 That's what makes this a crime. That's  
14 what shows he acted recklessly. And a gross  
15 deviation from the standard of conduct that a  
16 reasonable person, being on notice from 2005 and  
17 prior sweat lodge ceremonies, being on notice what  
18 happens when you push people, when you subject them  
19 to the extreme heat. He has people passing out  
20 believing they're having heart attacks. He's on  
21 notice, and yet in 2009 he chooses to conduct the  
22 sweat lodge in an even more intense manner.

23 THE COURT: I understand the argument about  
24 notice, and I understand that defense making a  
25 distinction between level of injury. But when you

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1 talk about something that happens after -- again  
2 I'm not talking about any decision I've made about  
3 any facts. But when you talk about something about  
4 how someone reacts to the incident, you have kind  
5 of a causation question that comes up there.

6 And the other aspect that hasn't really  
7 been dealt with is a 403 aspect. It almost appears  
8 you're talking about some trait of callousness or  
9 something that might -- that would clearly not be  
10 admissible. An argument to that effect would not  
11 be admissible. Evidence to that effect would not  
12 be admissible. That's a 403 question. But -- and  
13 that's separate.

14 I just want to stay now with something  
15 with how someone reacts after an incident, evidence  
16 as to how someone reacts after the incident going  
17 to show that there is an evidence of conscious  
18 disregard. I understand that's what you're saying.

19 MS. POLK: Your Honor, when I agree with the  
20 Court that how he reacts afterwards is not what's  
21 relevant, that's not the point that the state's  
22 trying to make. It's not how he reacts afterwards.  
23 It's how he reacted or failed to act while the  
24 ceremony is going on.

25 And just as with Daniel Pfankuch where he  
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1 leaves the sweat lodge, leaves one of his  
2 participants in there who is brought out by the  
3 wife, that's exactly what happens in 2009 where  
4 while the ceremony is going on, he's ignoring his  
5 other participants who are telling him that people  
6 are not breathing or people are unconscious. And  
7 then when it's over he leaves. And this time there  
8 are three people there, two of whom do not survive.

9 So I'm not trying to emphasize what he  
10 does after learning that they have not survived or  
11 that there is three people in the sweat lodge.  
12 Other than that there is going to be another  
13 question about calling 911 and the defendant's  
14 reaction when Miss Mercer is trying to find him to  
15 ask him if 911 should be called. Because that, of  
16 course, is very similar to what happened in 2005  
17 and the 911 call for Daniel Pfankuch.

18 THE COURT: Ms. Do, you want to respond?

19 MS. DO: Only if the Court is going to change  
20 the tentative ruling earlier. Otherwise I would  
21 agree with the Court. I think that what we've been  
22 hearing in terms of the evidence regarding what  
23 Mr. Ray allegedly did or didn't do after the prior  
24 acts and the act on October 8 occurred is a trait  
25 of character demonstrating that he's callus. That

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1 certainly is not an exception under 404(b).  
 2 Again, the defense would just like to  
 3 refocus this hearing on the issue of whether or not  
 4 these prior acts that the state alleged did, in  
 5 fact, occur and that they can establish by clear  
 6 and convincing evidence.

7 The Court has heard I think more than  
 8 sufficient evidence of what the state alleges  
 9 occurred on October 8 to draw any similarities if  
 10 there are any. I do agree with the Court. I think  
 11 at some point later when it's appropriate, we're  
 12 going to ask that such evidence showing Mr. Ray's  
 13 action or inaction after the acts occurred not be  
 14 admitted.

15 THE COURT: Thank you.

16 At this time I'm going to hear the  
 17 evidence. I've expressed my concerns with it.  
 18 I'll have to assess all of this, look at all of the  
 19 evidence after the hearing is completed.

20 So, Ms. Polk, go ahead and ask the  
 21 question.

22 MS. POLK: Thank you.

23 Q. Miss Mercer, after the three people were  
 24 pulled out of the sweat lodge in 2009, did you have  
 25 a conversation with someone about calling 911?

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1 A. Yeah. Because they were still alive.  
 2 Well, I could hear the woman breathing. And the  
 3 other guy wasn't blue.

4 So they're pulled out. The lady who I  
 5 thought the nurse comes -- was the nurse comes  
 6 over. And she says she's not breathing. And I  
 7 said I know. And -- she looks at me and says what  
 8 should we do? I thought she was the nurse. So I  
 9 thought what's going on here?

10 My husband comes around the corner, and  
 11 he goes call 911. He told that to Amayra. Amayra  
 12 walked the other way. Then he looked at me and he  
 13 goes call 911.

14 So someone said Megan has a phone. So I  
 15 looked over to James Ray because I couldn't see  
 16 Megan. I looked over to see where James was. He  
 17 was sitting in the same place he was when I told  
 18 him I needed help, when I asked if I could open the  
 19 back of the sweat lodge. He was sitting over in  
 20 the shade drinking some water. And he was still  
 21 there when I came running around saying we need to  
 22 call 911. Where is Megan?

23 And he goes like this -- I go I need a  
 24 phone. He just -- you know -- shrugged his  
 25 shoulders and took a drink of water. So I was

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1 living on property at the time. So I got in the  
 2 golf cart and ran over to my house -- I mean drove  
 3 to my house -- and called 911.

4 Q. You called 911?

5 A. Yes.

6 MS. POLK: Thank you, Miss Mercer.

7 Thank you, Judge.

8 THE COURT: Thank you, Ms. Polk.

9 Ms. Do?

10 MS. DO: May I have one moment, Your Honor?

11 THE COURT: Of course.

12 CROSS-EXAMINATION

13 BY MS. DO:

14 Q. Good morning. Miss Mercer -- are you  
 15 okay? You want a break?

16 A. (No audible response.)

17 THE COURT: We'll do that. Heidi, let's just  
 18 take a few minutes.

19 (Recess.)

20 THE COURT: The record will show the presence  
 21 of all the attorneys. The witness, Miss Mercer, is  
 22 on the witness stand and has been sworn.

23 And, Ms. Do, you may cross-examine.

24 MS. DO: Thank you.

25 Q. We're going to try this again.

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1 A. Yes.

2 Q. If I ask you something that you don't  
 3 understand, please just let me know. I'll rephrase  
 4 it or ask it better. Okay?

5 A. Okay.

6 Q. Let me start with what you've testified  
 7 to regarding the 2009 incident, Mrs. Mercer. You  
 8 had testified that at the 2009 sweat lodge you  
 9 stood outside and were able to hear certain things  
 10 going on inside; is that correct?

11 A. Yes. I was usually sitting outside.

12 Q. Okay. You were sitting outside the sweat  
 13 lodge, and you could hear what was going on inside?

14 A. When the door was opened, I could hear  
 15 everything. When it was closed, I could hear  
 16 somewhat muffled.

17 Q. Okay. But through the muffled you were  
 18 able to make out certain words, as you've testified  
 19 to?

20 A. Yes.

21 Q. And what you heard was certain people  
 22 inside the sweat lodge screaming or saying or  
 23 yelling out that there were folks inside  
 24 unconscious; is that correct?

25 A. That was when the door was open that was

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1 **being said.**

2 **Q.** Okay. How many times do you think you  
3 heard that said?

4 **A. Two or three. Two definitely. Three --**  
5 **I think another time. But yes.**

6 **Q.** And you're certain that you heard the  
7 word "unconscious"?

8 **A. Positive.**

9 **Q.** And when you heard somebody say or  
10 different people say two to three times that  
11 somebody was unconscious inside, what did that make  
12 you think or how did you feel when you heard that?  
13 Did it alarm you?

14 **A. What alarmed me was that they were asking**  
15 **James what to do about people unconscious. Because**  
16 **usually someone -- you know -- might take them out.**  
17 **But it's my job to sit at the door. I don't -- in**  
18 **the lodge James is in control.**

19 **Q.** I understand that. But what I'm asking  
20 you is I'm sure that as you're sitting outside and  
21 you're hearing somebody inside or people inside  
22 yelling out somebody is unconscious, that must have  
23 made you a little bit alarmed; correct?

24 **A. Yes.**

25 **Q.** All right. It would have made you think  
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1 that there was a distressful situation going on  
2 inside the lodge; correct?

3 **A. Yes.**

4 **Q.** And then what you testified to is that  
5 then you heard Mr. Ray respond to those statements;  
6 is that correct?

7 **A. Yes.**

8 **Q.** And you heard Mr. Ray say things to the  
9 effect of just leave them be?

10 **A. Yes.**

11 **Q.** That must have made you quite alarmed;  
12 correct?

13 **A. Concerned. Yes.**

14 **Q.** Okay. And you're certain that you heard  
15 that?

16 **A. Yes.**

17 **Q.** All right. And when you heard those  
18 things allegedly, you continued on with the sweat  
19 lodge; correct?

20 **A. James continued on with the sweat lodge.**

21 **Q.** What I mean is in your role you didn't do  
22 anything to try to stop it; correct?

23 **A. No.**

24 **Q.** And I understand you're probably going to  
25 say you didn't feel like was your position to do

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1 that?

2 **A. Correct.**

3 **Q.** Okay. But you didn't turn to Ted, for  
4 example, your husband, and tell him we should stop  
5 this; correct?

6 **A. I remember turning to my friend and**  
7 **hugging her and saying this isn't right. This**  
8 **isn't right.**

9 **Q.** That would be Fawn Foster?

10 **A. Yes.**

11 **Q.** Okay. Now, let me ask you this: The  
12 night that the sweat lodge ended, the sheriff's  
13 department arrived; correct?

14 **A. Yes.**

15 **Q.** And you were there to see that happen?

16 **A. Yes.**

17 **Q.** Paramedics arrived. Were you there to  
18 see that happen; correct?

19 **A. Yes.**

20 **Q.** And the scene was quite traumatic,  
21 wouldn't you say?

22 **A. Yes.**

23 **Q.** And that night you actually got  
24 transported to the hospital yourself; correct?

25 **A. Yes.**

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1 **Q.** And you were transported to the hospital  
2 not as a visitor but as a patient? You were  
3 admitted; correct?

4 **A. No. Well, admitted to the emergency**  
5 **room. I was seen in the emergency room.**

6 **Q.** That's what I mean. You didn't go to the  
7 hospital to visit people that had gotten sick or  
8 ill from the sweat lodge?

9 **A. No.**

10 **Q.** You went because you were being treated  
11 as a patient yourself; correct?

12 **A. Correct.**

13 **Q.** And then at some point while you were in  
14 the hospital, I think your husband was with you;  
15 correct?

16 **A. Yes.**

17 **Q.** At some point while you were in the  
18 hospital a detective, Detective Pam Edgerton,  
19 interviewed you; correct?

20 **A. Yes. But it --**

21 **Q.** Let me just get a yes. Is that a yes?

22 **A. I had an oxygen mask on my face and I was**  
23 **being treated. So it was while -- yes.**

24 **Q.** Okay. And -- well, with this oxygen mask  
25 you were able to communicate with her still; is

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- 1 that correct? I mean, you could hear what she was  
 2 asking you; right?  
 3 **A. Yeah. But I don't think -- but I'm**  
 4 **talking about with an oxygen mask on my face.**  
 5 **So --**  
 6 **Q.** I understand.  
 7 **A. Okay.**  
 8 **Q.** But there wasn't anything covering your  
 9 ears, so were you able to hear the questions she  
 10 asked you? Yes?  
 11 **A. Yes.**  
 12 **Q.** And having seen the sheriffs and the  
 13 paramedics descend upon the scene, you understood  
 14 how serious the situation was; correct?  
 15 **A. Yes.**  
 16 **Q.** And so this would have been your first  
 17 interview for the first statement you would have  
 18 given to anyone regarding what you may have seen or  
 19 observed or heard; is that correct?  
 20 **A. Yes.**  
 21 **Q.** Okay. So you hadn't spoken to anyone  
 22 before Detective Pam Edgerton went into your  
 23 hospital room; correct?  
 24 **A. Well, no.**  
 25 **Q.** Okay.

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- 1 **A. I mean, I talked to paramedics and we**  
 2 **talked to the police who arrived at the scene.**  
 3 **Q.** Sure. But the first full interview or  
 4 the first meaningful opportunity where a detective  
 5 asked you questions and you answered would have  
 6 been when Detective Edgerton spoke to you; correct?  
 7 **A. In the hospital, yes.**  
 8 **Q.** And that would have been the first  
 9 statement. Now, let me ask you.  
 10 Detective Edgerton asked you questions about what  
 11 had happened about the 2009 sweat lodge; correct?  
 12 Yes?  
 13 **A. Yes.**  
 14 **Q.** And she was asking you specific  
 15 questions; right?  
 16 **A. I don't recall actually -- you know --**  
 17 **what she asked me. I would imagine they were.**  
 18 **Q.** Okay. I mean, she asked you, for  
 19 example, if you were at the sweat lodge when all  
 20 this happened; right?  
 21 **A. Yes.**  
 22 **Q.** And you told her yes?  
 23 **A. Yes.**  
 24 **Q.** She probably asked you what your role  
 25 was; right?

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- 1 **A. Yes.**  
 2 **Q.** And you told her that you and your  
 3 husband were fire attendants; correct?  
 4 **A. Yes.**  
 5 **Q.** And she asked you specific questions  
 6 about what you may have observed once the ceremony  
 7 ended; correct?  
 8 **A. I don't remember. But I would assume,**  
 9 **yes.**  
 10 **Q.** Okay.  
 11 **A. I don't remember exactly what she asked**  
 12 **me.**  
 13 **Q.** Did you know whether or not at that  
 14 moment you were being tape-recorded by  
 15 Detective Edgerton?  
 16 **A. No. I don't remember that. It was a lot**  
 17 **going on, and I was in the hospital. I knew**  
 18 **someone had died. There was other people -- you**  
 19 **know -- in the other rooms, and I was concerned**  
 20 **about them and hearing other things.**  
 21 **Q.** I'm sure. I understand that. So when  
 22 Detective Edgerton asked you these questions, you  
 23 answered to the best of your ability; correct?  
 24 **A. Considering the circumstances, yes. It**  
 25 **was still all in the moment.**

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- 1 **Q.** Yes.  
 2 **A. Nothing had had a chance to -- you know**  
 3 **-- settle.**  
 4 **Q.** No time to think about what you were  
 5 going to say?  
 6 **A. No. Not what I was going to say. But no**  
 7 **time to think about what had happened and about**  
 8 **what -- you know. We were just so in the moment --**  
 9 **you know. It was reacting to a -- you know --**  
 10 **yeah.**  
 11 **Q.** But you were of the mind, you had the  
 12 ability to tell Detective Edgerton that people came  
 13 out of the sweat lodge sick; correct?  
 14 **A. Yes.**  
 15 **Q.** And I believe you also told  
 16 Detective Edgerton that you had only seen this  
 17 occur with James Ray sweat lodges; correct?  
 18 **A. Probably.**  
 19 **Q.** Okay. So you were able to recall certain  
 20 details, yes?  
 21 **A. Sure.**  
 22 **Q.** And notwithstanding whether or not you  
 23 were able to speak through an oxygen mask, you  
 24 certainly did your best to tell her the truth;  
 25 correct?

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1 A. Yes.

2 Q. And the events would have been freshest  
3 in your mind having gone from the tragic accident,  
4 the disaster scene, to the hospital; correct? I  
5 mean, only a matter of hours? Yes?

6 A. Yes.

7 Q. Okay. Now, when you spoke to  
8 Detective Edgerton, do you remember whether or not  
9 she asked you specifically did you notice anybody  
10 during the actual sweat lodge, or I don't know  
11 because you were inside, but did you hear anybody  
12 in there having any specific problems? Do you  
13 remember her asking you that question?

14 MS. POLK: Excuse me. Your Honor, I'd like to  
15 just make a standing request that if references are  
16 going to be made to prior statements that counsel  
17 notify me ahead of time a page and a line so I can  
18 follow along pursuant to Rule 613 of the Rules of  
19 Evidence.

20 THE COURT: That's consistent with 613.

21 MS. DO: Your honor --

22 THE COURT: And, again, I know we talked about  
23 104. There are reasons to do this. As I mentioned  
24 before, there is an element of fairness to a  
25 witness in impeachment situations. Also the  
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1 orderly presentation of evidence, and the opposing  
2 party gets to see the statement.

3 MS. DO: I understand. I'm sorry. I thought  
4 I was establishing the foundation by asking her if  
5 she did say that. And if she said no, then it  
6 would be inconsistent.

7 THE COURT: Okay. There was no hearsay  
8 objection. And could be admissible. So all right.  
9 It's hearsay. But you may proceed.

10 MS. DO: Thank you.

11 I will show Ms. Polk and play the excerpt  
12 when I establish the foundation if the Court is  
13 willing.

14 THE COURT: And the foundation for?

15 MS. DO: Well, I believe I need to ask her the  
16 question of whether or not she did say this to  
17 Detective Edgerton. If she says yes, then we move  
18 forward. If she says no or I don't recall -- I  
19 understand this is a little but strange because the  
20 Court had already indicated hearsay. The hearsay  
21 rule doesn't apply to this.

22 THE COURT: Well, I just quoted Rule 104, and  
23 I asked the defense if you disagreed with my  
24 interpretation. I don't think I asked Ms. Polk if  
25 she disagreed. I haven't heard anyone disagree  
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1 with that. If anybody has an objection even to  
2 alert the Court with a problem with evidence, I  
3 want to have a hearing where people can do that.  
4 And I'll consider that.

5 But with the rules of evidence not  
6 strictly applying, we'll proceed in this fashion.  
7 But Ms. Polk has asked for references at this  
8 point.

9 Anything else?

10 MS. POLK: Yes, Judge. The rule requires that  
11 counsel provide me with the statement. I don't  
12 have a -- she has a transcript that has page  
13 numbers and line references and has not provided it  
14 to me. I would just ask that I be provided so I  
15 can, again, follow along, as contemplated by  
16 Rule 613.

17 MS. DO: Your Honor, I'm relying on an audio  
18 provided to the defense by the state. The audio  
19 for whatever reason was not transcribed like the  
20 other 120 witnesses for whom transcription were  
21 provided. So we went through the trouble of doing  
22 it ourselves. I would like to play the excerpt  
23 because I think that's the best evidence.

24 May I proceed?

25 THE COURT: Yes, you may.

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1 MS. DO: Thank you.

2 Q. Mrs. Mercer, my question to you was did  
3 Detective Edgerton ask you this specific question:  
4 Did you notice anybody during the actual sweat  
5 lodge -- and this is the 2009. Did you notice  
6 anybody during the actual sweat lodge, or I don't  
7 know because you weren't inside. But did you hear  
8 anybody in there having any specific problems?

9 Do you remember that question being put  
10 to you?

11 A. No.

12 Q. Do you remember whether or not your  
13 answer to that question was oh. You hear moaning  
14 and groaning and people breathing hard. And then  
15 -- you know -- James will tell you to slow your  
16 breathing down, or but yeah. That's normal. There  
17 is a bunch of people in there experiencing it.

18 Do you remember that?

19 A. No. I don't remember that.

20 MS. DO: Okay. Your Honor, at this time I'd  
21 like to mark an audio which we had not intended to  
22 use as defense -- or exhibit next order, 93. And  
23 may I play the audio portion?

24 THE COURT: Ms. Polk?

25 MS. POLK: Your Honor, my objection is not to  
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1 the contents of the audios or the transcripts. My  
2 objection is that it has not been provided to the  
3 state. It's an issue of fairness so that I can  
4 look at the context of where these statement are  
5 coming out.

6 It's unfair to pull something out, play  
7 just a portion and not provide to the state a copy  
8 of the entire statement so that in the interest of  
9 trying to seek out the facts we can all understand  
10 the context of what happened.

11 The Rule 613 clearly provides that upon  
12 request the statement has to be shown or disclosed  
13 to opposing counsel. That's all I'm asking is that  
14 I be given some notice of what this is so that I  
15 can respond appropriately.

16 THE COURT: It's Detective Edgerton's  
17 recording, which you provided; right? Isn't  
18 that -- Ms. Polk, you provided this recording?

19 MS. POLK: Yes, Your Honor. But I think the  
20 rule contemplates having in court the statements so  
21 that we can figure out what really happened, what's  
22 really said and not pull out little pieces to play  
23 without having the state have the opportunity to  
24 look at the context, the bigger context, of where  
25 the statement comes out of.

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1 THE COURT: I'm going to hear the excerpt now.  
2 And at the recess you will have the tape, Ms. Polk.  
3 Perhaps the disclosure just hasn't been ideal.  
4 This is a pretrial hearing, though.

5 So you may proceed.

6 MS. DO: Thank you, Your Honor.

7 For the record, I'm playing the excerpt  
8 that begins at time 17:05 on the state's recording.

9 May I just have a moment?

10 THE COURT: Of course.

11 Q. BY MS. DO: Miss Mercer, I'm going to ask  
12 you to listen to this excerpt, please.  
13 (recording played.)

14 Q. BY MS. DO: Mrs. Mercer, I just played  
15 the excerpt for you. And the male voice would have  
16 been your husband, Ted Mercer; is that correct?

17 A. Yes.

18 Q. And prior to the excerpt, regarding  
19 whether or not you heard anything from inside the  
20 sweat lodge, is it true that you and Mr. Mercer  
21 told Detective Edgerton that people were free to  
22 leave?

23 A. They are.

24 Q. And they are; correct?

25 A. Yes.

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1 Q. No one forced them to stay inside?

2 A. As long as they're conscious.

3 Q. All right. And in this excerpt where

4 Detective Edgerton asked you a very specific  
5 question of whether you heard anybody inside the  
6 sweat lodge having specific problems, your answer  
7 to her was moaning and groaning, but that's normal;  
8 correct? Is that a yes?

9 A. Yes. But --

10 Q. Do you remember whether in this interview  
11 you ever told Detective Edgerton that you heard  
12 people inside the sweat lodge say folks were down?  
13 folks were unconscious?

14 A. No. I don't remember that interview very  
15 much at all.

16 Q. Is it possible you actually did not tell  
17 her that?

18 A. I don't remember that interview very much  
19 at all.

20 Q. Do you remember whether or not you told  
21 Detective Edgerton in this first interview you had  
22 with anyone that you heard James Ray repeat or  
23 respond that that's fine? Let them be?

24 A. What was the question again?

25 Q. Do you remember whether or not in this  
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1 interview with Detective Edgerton you told her --

2 A. She wasn't at -- no.

3 Q. Let me finish the question so it's clear  
4 on the record. You told her that James Ray  
5 responded to those statements by saying things to  
6 the effect of let them be?

7 A. I don't remember her specific questions.  
8 But I know that at the time my answers were based  
9 on the situation being hours old and not having  
10 time to --

11 Q. Think?

12 A. Feel or even experience the moment  
13 because everything was very, very fresh.

14 Q. All right. Let me move on, then,  
15 Mrs. Mercer. You've indicated that you have worked  
16 three of James Ray's sweat lodges; is that correct?

17 A. Yes.

18 Q. And that would have been the first one in  
19 2007?

20 A. Yes.

21 Q. 2008 and then 2009?

22 A. Yes.

23 Q. The one that you worked at in 2007, you  
24 and Mr. Mercer were actually volunteers; correct?

25 A. Yes.

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1 Q. And so you weren't paid for that. You  
2 volunteered your time?

3 A. **Correct.**

4 Q. And you were actually assisting another  
5 person named Gary Palisch, who was the actual fire  
6 tender; correct?

7 A. **Yes.**

8 Q. You returned in 2008 again, according to,  
9 I believe, what Mrs. Hamilton said, as a volunteer  
10 again; correct?

11 A. **I was a volunteer.**

12 Q. So you weren't paid?

13 A. **Correct.**

14 Q. You did return in 2009, and this time you  
15 were contracted, and so you were paid? Yes?

16 A. **Yes.**

17 Q. All right. So in 2007 and 2008 you and  
18 Mr. Mercer assisted Gary Palisch; is that right?

19 A. **In 2007 we assisted Gary. 2008 he was  
20 not there.**

21 Q. You assisted someone else?

22 A. **Right. No. In 2007 Gary was the door  
23 keeper. In 2008 he was there. I was the  
24 assistant. And in 2009 I was the door keeper.**

25 Q. Okay. So let me make sure I understand  
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1 that correctly. 2007 and 2008 Mr. Palisch was  
2 there. Did I get you right?

3 A. **I believe so.**

4 Q. All right. And both of those years you  
5 and Mr. Mercer weren't responsible for tending the  
6 fire or pitching the stones into the sweat lodge?  
7 You were assisting Mr. Palisch; correct?

8 A. **We were -- well, Gary was the door  
9 keeper. We made the fire and did the rocks. I was  
10 near the door.**

11 Q. What does the door keeper do?

12 A. **The door keeper sits at the door.**

13 Q. What you did in 2009?

14 A. **Yes. And listens for James to call for  
15 the door to be opened. And when you open the door,  
16 you open the door, and you're there to assist James  
17 or do what he says.**

18 Q. Thank you. Now I understand. So then  
19 Mr. Palisch actually was closest to the sweat lodge  
20 in 2007 and 2008 physically; correct?

21 A. **Yes.**

22 Q. Being right at the door?

23 A. **Yes.**

24 Q. And you and Mr. Mercer were  
25 approximately -- how far is the fire pit to the

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1 sweat lodge in 2007? And if you need to use  
2 something in the courtroom to give us an idea, you  
3 can do that as well.

4 A. **Yeah. It's about the distance from the  
5 defense table to this table.**

6 Q. Does the Court have an estimate? I'm not  
7 sure.

8 A. **Maybe 8 feet, eight to 10 feet.**

9 Q. I don't know if the Court has  
10 measurements.

11 THE COURT: I have plans. It roughly is the  
12 length of the bench there in front of the jury box.

13 MS. DO: Okay. Thank you. Maybe we can take  
14 measurements later. I'll move on.

15 Q. So that's the approximate distance from  
16 the fire pit where you and Mr. Mercer were in '07  
17 to the sweat lodge; correct?

18 A. **Yes. But we -- you're not just standing  
19 there by the fire. You're all around.**

20 Q. Got it. But the fire pit itself is that  
21 approximate distance to the sweat lodge; correct?

22 A. **Yes.**

23 Q. Is it -- Was it the same in '08?

24 A. **Actually, I think it was moved a little.  
25 But -- oh, no. It was moved in '09. Yes, it was**

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1 **the same.**

2 Q. Okay. So let me focus back now to the  
3 2009 sweat lodge, the one where you and Ted -- this  
4 would have been the first time that you and Ted  
5 actually tended the fire and kept the door on your  
6 own; correct? No one else was there to help you,  
7 meaning somebody in the role of, like, Gary  
8 Palisch?

9 A. **Well, Amayra was there. She would come  
10 down. She wasn't there the whole time. But Ted  
11 and I were the fire keeper and the door tender.**

12 Q. I understand Amayra came down and I  
13 believe another staff, Angel Valley staff, Fawn  
14 Foster, was also there?

15 A. **Yes.**

16 Q. But in terms of actual participating  
17 roles in the sweat lodge, that would be you and  
18 Mr. Mercer; correct?

19 A. **Yes.**

20 Q. And that was the first year you and  
21 Mr. Mercer took on that role by yourself; correct?

22 A. **For James Ray's events?**

23 Q. **Yes.**

24 A. **Yes.**

25 Q. All right. Now, that year in 2009 Ted  
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- 1 started the fire, maintained the fire, made sure  
2 the rocks were hot; correct?  
3 **A. Yes.**  
4 **Q.** And then somebody from inside the sweat  
5 lodge would call out and say how many stones for  
6 that round?  
7 **A. James Ray called for the stones.**  
8 **Q.** Okay. And when James Ray called for the  
9 stones, Ted would take that number of stones and  
10 give it to you; correct?  
11 **A. He would take one stone at a time, bring**  
12 **it to the rock to be brushed off. It would come**  
13 **out on a pitch fork. It would be put on a shovel,**  
14 **handed to a person inside the sweat lodge, and they**  
15 **would take the shovel and then dump it into the --**  
16 **Q.** Got it. Who handed the stones into the  
17 sweat lodge?  
18 **A. It would vary. Either Fawn or whoever**  
19 **was helping.**  
20 **Q.** You didn't do that?  
21 **A. Yes. Sometimes.**  
22 **Q.** Okay. How many times do you think you  
23 had the responsibility of taking the stones from  
24 the fire pit to handing it off to somebody inside  
25 the sweat lodge?

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- 1 **A. In 2009?**  
2 **Q.** Yes.  
3 **A. I didn't do the stones.**  
4 **Q.** So what was your role?  
5 **A. The door keeper.**  
6 **Q.** All right. So you --  
7 **A. They would bring the -- I would hand it,**  
8 **like, from the door to the inside.**  
9 **Q.** That's what I'm getting at. That's what  
10 you did; correct? At the door you handed someone  
11 else the stones; correct?  
12 **A. Yes.**  
13 **Q.** Okay. When you did that, did you ever go  
14 inside the sweat lodge?  
15 **A. No.**  
16 **Q.** So you stayed outside the sweat lodge?  
17 **A. Yes.**  
18 **Q.** Did any portion of your body go inside  
19 the sweat lodge?  
20 **A. Well, yeah. I would lean in. I would**  
21 **say at points my hand and head were in there. But**  
22 **just to reach in. Because of the shape of it you**  
23 **want to reach in.**  
24 **Q.** So just for a second you would reach in;  
25 correct?

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- 1 **A. Yes.**  
2 **Q.** Pull back out?  
3 **A. Yes.**  
4 **Q.** And you did that how many times you  
5 think?  
6 **A. I really can't recall.**  
7 **Q.** Okay. But if we added up all the time,  
8 it wouldn't be more than a few minutes; correct?  
9 **A. You mean all the time that my body was in**  
10 **the sweat lodge?**  
11 **Q.** Your head and hand leaning in.  
12 **A. No.**  
13 **Q.** You would agree? A few minutes? So you  
14 weren't exposed to the heat inside the sweat lodge?  
15 **A. Oh, I could feel it. You didn't have to**  
16 **be in it to feel it.**  
17 **Q.** But not the long exposure that people  
18 inside the sweat lodge experienced; correct?  
19 **A. Correct?**  
20 **Q.** Okay. Now, you went to the hospital that  
21 night?  
22 **A. Yes.**  
23 **Q.** And you were admitted as a patient?  
24 **A. Yes.**  
25 **Q.** They put the oxygen mask on you?

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- 1 **A. Yes.**  
2 **Q.** What else did they do to you? What else  
3 did they do to treat you?  
4 **A. They gave me a pill for nausea,**  
5 **antinausea --**  
6 **Q.** Were you feeling nauseated?  
7 **A. Yes.**  
8 **Q.** What else did they do?  
9 **A. I got an IV, I believe, because they**  
10 **thought I was dehydrated.**  
11 **Q.** Anything else?  
12 **A. I don't think so.**  
13 **Q.** Were you kept overnight?  
14 **A. No.**  
15 **Q.** They released you after a few hours?  
16 **A. Yes.**  
17 **Q.** Okay. And you did have a doctor, an  
18 emergency doctor, treat you?  
19 **A. Yes.**  
20 **Q.** Okay. But you weren't inside the sweat  
21 lodge?  
22 **A. No.**  
23 **Q.** All right. Now, let me move directly to  
24 the interview you gave with Detective Diskin now.  
25 This would be the second time you spoke to anyone

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- 1 at law enforcement on the 9th; correct?  
 2 **A. Yes.**  
 3 **Q.** And that would have been the morning  
 4 after the sweat lodge ended?  
 5 **A. Yes.**  
 6 **Q.** And this was an interview that took place  
 7 at the site at Angel Valley; correct?  
 8 **A. Yes.**  
 9 **Q.** And at the time when you spoke to  
 10 Detective Diskin, the sweat lodge was still there;  
 11 correct?  
 12 **A. Yes.**  
 13 **Q.** And as you were telling him what  
 14 happened, you used the sweat lodge sitting there to  
 15 sort of illustrate and help him understand what it  
 16 was that you saw or heard or did; correct?  
 17 **A. Probably.**  
 18 **Q.** It was helpful to have the sweat lodge  
 19 there; right?  
 20 **A. It just happened to be where I saw him.**  
 21 **But --**  
 22 **Q.** Sure. But it was helpful for you to  
 23 communicate to Detective Diskin what it was that  
 24 you saw on the night, October 8, to be able to  
 25 point to things about the sweat lodge; correct?

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- 1 **A. Sure.**  
 2 **Q.** To talk about the materials that were  
 3 used? Yes?  
 4 **A. Yes.**  
 5 **Q.** The wood that was burned, yes?  
 6 **A. Yes.**  
 7 **Q.** The rocks that were used, yes?  
 8 **A. Yes.**  
 9 **Q.** Now, after you spoke to him, Angel Valley  
 10 then had some sort of cleansing ceremony; is that  
 11 correct?  
 12 **A. Yes.**  
 13 **Q.** And everything was taken down?  
 14 **A. Yes.**  
 15 **Q.** All right. Now, when you talked to  
 16 Detective Diskin that morning, did you know that  
 17 you were being taped? Did he tell you that?  
 18 **A. Yes.**  
 19 **Q.** All right. And you understood  
 20 Detective Diskin was there to investigate the  
 21 deaths that occurred the night before as homicides;  
 22 correct?  
 23 **A. No.**  
 24 **Q.** You didn't know that? Okay.  
 25 **A. No. I mean, I -- no.**

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- 1 **Q.** But you did understand he was there to  
 2 investigate something that was very serious that  
 3 you observed that was very traumatic; correct?  
 4 **A. Yes.**  
 5 **Q.** And you knew that Detective Diskin needed  
 6 to have all of the information possible in order to  
 7 investigate the facts and the evidence; correct?  
 8 **A. Yes. I think I talked to him because I**  
 9 **felt like the interview in the emergency room**  
 10 **wasn't enough.**  
 11 **Q.** Did you call Detective Diskin?  
 12 **A. No.**  
 13 **Q.** He came out to see you; correct?  
 14 **A. No. He was just there, and I walked up**  
 15 **to him.**  
 16 **Q.** He was just there?  
 17 **A. He was on the property at Angel Valley.**  
 18 **I lived on the property at Angel Valley.**  
 19 **Q.** Right.  
 20 **A. I can't remember what I was doing, but at**  
 21 **one point I saw him. And I didn't -- I just wanted**  
 22 **to talk to a police officer.**  
 23 **Q.** Okay. So the next morning you realized  
 24 that you had not given a complete, full statement  
 25 to Detective Edgerton? Is that your testimony?

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- 1 **A. Yes.**  
 2 **Q.** And then when you realized that, you  
 3 didn't pick up the phone and call anyone at the  
 4 sheriffs to tell them that; is that correct?  
 5 **A. No. I think it was more of just --**  
 6 **Q.** Did you do that? Did you pick up the  
 7 phone?  
 8 **A. No.**  
 9 **Q.** Detective Diskin then happened to be at  
 10 Angel Valley; correct --  
 11 **A. Yes.**  
 12 **Q.** -- is your testimony? Now, isn't it  
 13 true that he came out and interviewed Ted Mercer,  
 14 your daughter, Sarah Mercer, and then you?  
 15 **A. I can't recall.**  
 16 **Q.** But he did, in fact, interview all three  
 17 of you that day?  
 18 **A. I believe so.**  
 19 **Q.** Okay. Now, when Detective Diskin asked  
 20 you questions, he asked you again specific  
 21 questions about what happened on 2009; correct? Or  
 22 in 2009.  
 23 **A. Yes.**  
 24 **Q.** He also wanted to know if anything had  
 25 happened in previous sweat lodges including 2007

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1 and 2008; correct?

2 **A. I don't remember the exact questions he**  
3 **asked. And --**

4 **Q.** And that's fair. What I'm asking is he  
5 did ask you about the subject of the 2007 sweat  
6 lodge; correct?

7 **A. I can't recall.**

8 **Q.** You can't recall that? Okay. Do you  
9 remember whether or not he asked you specific  
10 questions about the 2008 sweat lodge?

11 **A. I remember talking about it. So I would**  
12 **guess he asked those specific questions.**

13 **Q.** Let me ask you this: And I may be wrong.  
14 Yesterday I saw you and Mr. Mercer reviewing what  
15 appeared to be the transcript of your previous  
16 statement.

17 **A. You're wrong.**

18 **Q.** You were reading something else?

19 **A. We were editing a book.**

20 **Q.** Okay. I'm sorry. I apologize. Have you  
21 reviewed your transcript?

22 **A. No.**

23 **Q.** Okay. I'll provide it to you in a  
24 second. When Detective Diskin asked you questions  
25 on the 9th, you had the events freshest in your

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1 mind on that day as well; right?

2 **A. Yes.**

3 **Q.** And at this point, again, you're thinking  
4 you haven't given a complete statement; correct?

5 **A. Yes. I wanted to be sure.**

6 **Q.** So you were even more inclusive about  
7 facts as you remembered them when you talked to  
8 Detective Diskin; is that correct?

9 **A. Yes.**

10 **Q.** He also at the end of the interview gave  
11 you a business card; is that correct?

12 **A. Yes.**

13 **Q.** And so he told you if you think of  
14 anything else, if you've forgotten something, give  
15 me a call; right?

16 **A. Yes.**

17 **Q.** And after you interviewed with  
18 Detective Diskin on the 9th, did you ever pick up  
19 the phone and call him again?

20 **A. I believe so.**

21 **Q.** And that was in regard to some  
22 photographs you gave him; correct?

23 **A. Yes.**

24 **Q.** But not to give or add anything to your  
25 statement; is that correct?

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1 **A. I don't recall.**

2 **Q.** All right. Now, let me move to the 2007  
3 sweat lodge. Yesterday you testified under direct  
4 examination that there was a man, an older man,  
5 with a heart condition. Do you remember that?

6 **A. Yes.**

7 **Q.** And you said that in 2007 this older man  
8 with a heart condition came out of the sweat lodge  
9 in medical distress. Do you remember that?

10 **A. Yes.**

11 **Q.** You also testified yesterday that this  
12 man with the heart condition, having come out in a  
13 medical distress or in medical distress, jumped  
14 into a creek; is that correct?

15 **A. Yes.**

16 **Q.** Now, you obviously don't have any medical  
17 training; correct?

18 **A. No.**

19 **Q.** So this is your opinion that he was in  
20 medical distress?

21 **A. No.**

22 **Q.** No, it's not your opinion?

23 **A. He told me.**

24 **Q.** Oh. He told you. So you had a  
25 conversation with him?

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1 **A. Yes.**

2 **Q.** When did you have this conversation?

3 **A. When he walked up to me and said I have a**  
4 **heard condition. I need to get in the water. I**  
5 **need to cool down.**

6 **Q.** Where did he say that?

7 **A. Outside of the sweat lodge.**

8 **Q.** Okay. So on that day outside the sweat  
9 lodge this older man tells you he has a heart  
10 condition; is that right?

11 **A. Yes.**

12 **Q.** And that he needs to cool down?

13 **A. Yes.**

14 **Q.** Now, do you know whether or not it's  
15 ideal or it's within the Native American tradition  
16 to build sweat lodges near water for the purpose of  
17 having people cool off?

18 **A. I'm not aware.**

19 **Q.** Okay. So this man says he has an  
20 existing heart condition and he needs to cool off.  
21 Did he say anything else?

22 **A. He said he didn't know where his shoes**  
23 **were and he didn't care. Just get him to the**  
24 **creek.**

25 **Q.** Okay. Did he tell you that he was having

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1 a heart attack?  
 2 **A. No.**  
 3 **Q.** Did he tell you that he was experiencing  
 4 convulsions?  
 5 **A. No.**  
 6 **Q.** Did he tell you that he was experiencing  
 7 problems with consciousness? unconsciousness?  
 8 **A. He said he was feeling faint, his heart**  
 9 **was -- he had a heart condition. I can't remember**  
 10 **exactly what he said. But he was intent on telling**  
 11 **me that he had a medical condition and he wanted me**  
 12 **to guide him to the water.**  
 13 **Q.** An existing one?  
 14 **A. Yes.**  
 15 **Q.** And so you guided him to the water. And  
 16 he physically was capable of jumping into creek;  
 17 correct?  
 18 **A. No. He didn't jump in. He fell in.**  
 19 **Q.** He just fell in? And then what happened?  
 20 **A. One of his friends came over with his**  
 21 **shoes, and I left.**  
 22 **Q.** Was he able --  
 23 **A. I don't know.**  
 24 **Q.** At the time you were there, when he fell  
 25 into the creek, did you see him drown, or was he

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1 able to wade the water?  
 2 **A. The water -- he fell into the side. So**  
 3 **wasn't deep enough. I mean, he just fell. And**  
 4 **then his friend walked up, and I ran back to the**  
 5 **sweat lodge. I don't know what he did in the**  
 6 **water.**  
 7 **Q.** Okay. So you didn't see any more after  
 8 that?  
 9 **A. No. I got him to the water, and his**  
 10 **friend came, and I left.**  
 11 **Q.** You also testified later -- or yesterday  
 12 that you at some point later spoke to him again; is  
 13 that correct?  
 14 **A. Yes.**  
 15 **Q.** And so you had now two conversations with  
 16 this man? Can you tell The Court what his name is?  
 17 **A. No.**  
 18 **Q.** You don't remember or you never got it?  
 19 **A. Both. I don't know that I ever got it.**  
 20 **And if I did, I'm sure I wouldn't remember.**  
 21 **Q.** Now, do you remember whether or not you  
 22 ever told Detective Diskin about a man with a heart  
 23 condition who jumped into the creek in 2007 when  
 24 you spoke to him on the 9th?  
 25 **A. Do I remember if I told him that.**

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1 **Q.** Yeah?  
 2 **A. No. I don't remember.**  
 3 **Q.** Is it possible that you never mentioned  
 4 it?  
 5 **A. Yes.**  
 6 **Q.** Is it possible that yesterday was the  
 7 first time you've told anyone about that?  
 8 **A. No.**  
 9 **Q.** You've told the state before; is that  
 10 correct?  
 11 **A. Yes.**  
 12 **Q.** When did you tell them that?  
 13 **A. I can't remember if it was in the -- our**  
 14 **initial interview. I think it was then. Or -- I**  
 15 **can't recall.**  
 16 **Q.** Okay. So you've had subsequent  
 17 interviews other than with Detective Diskin?  
 18 **A. I had -- interviews with who?**  
 19 **Q.** With the state or with the sheriffs.  
 20 You've given additional statements?  
 21 **A. I had an interview with the prosecutor**  
 22 **and then a conversation.**  
 23 **Q.** And was it in this interview with the  
 24 prosecutor that you first mentioned the man with  
 25 the heart condition who jumped into the creek?

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1 **A. I can't recall.**  
 2 **Q.** All right. Let me move on. You also  
 3 testified yesterday that during the third round of  
 4 the sweat lodge in 2007 a girl came out and passed  
 5 out right in the doorway. Do you remember that?  
 6 **A. Yes.**  
 7 **Q.** And "passed out" meaning unconscious?  
 8 **A. Yes.**  
 9 **Q.** She just went unconscious; correct?  
 10 **A. Yes.**  
 11 **Q.** Now, since you're not a medical doctor,  
 12 I'd like to try and understand what you mean when  
 13 you say "unconscious." Are you -- what are you  
 14 seeing when you think unconscious?  
 15 **A. For that particular girl?**  
 16 **Q.** Sure.  
 17 **A. That particular girl, when she started**  
 18 **coming out of the sweat lodge, her eyes were not**  
 19 **clear. When she got through the door, she tried to**  
 20 **stand up. She fell down flat, was not moving. I**  
 21 **rolled her over. Her eyes were rolling, fluttering**  
 22 **up back into her head. Drool was coming out of her**  
 23 **mouth, and she was bleeding from her face, nose and**  
 24 **eye.**  
 25 **Q.** Okay. When somebody comes out -- if I

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1 understand correctly, the sweat lodge is quite dark  
2 inside. Correct?

3 **A. Back inside. I mean, you can see the**  
4 **pit. You can see people. If I'm sitting at the**  
5 **door, I can see people. I can --**

6 **Q.** But if you're inside the sweat lodge and  
7 it's during a round, the flap closed, it's pitch  
8 dark?

9 **A. Yes.**

10 **Q.** And somebody emerges out of the sweat  
11 lodge, they're immediately going from pitch dark to  
12 light; correct?

13 **A. No. Because as you go towards the door,**  
14 **it gets lighter.**

15 **Q.** Okay. And it's your testimony that she  
16 just passed out and went unconscious at the door;  
17 is that correct?

18 **A. Yes. It was clear as she was getting**  
19 **close to the door, she wasn't coherent.**

20 **Q.** All right.

21 May I have a moment, Your Honor?

22 THE WITNESS: But lots of people passed out.

23 MS. DO: Counsel, I'm going to direct you to  
24 the Sheriff's supplemental report 46, Bates stamped  
25 196.

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1 May I approach, Your Honor?

2 THE COURT: Yes.

3 **Q.** BY MS. DO: Mrs. Mercer, I'm going to  
4 show you what the state has given to us. It's a  
5 transcript of the statement you gave to  
6 Detective Diskin on October 9. Okay?

7 **A. Okay.**

8 **Q.** I'm going to ask you to read, if you  
9 will, starting at supplement page 196 where I've  
10 indicated here down to this line. Okay? Let me  
11 know when you're done.

12 **A. I might have a problem because I don't**  
13 **have my reading glasses.**

14 **Q.** Okay. Try your best.

15 **A. The --**

16 **Q.** To yourself first.

17 (Pause in proceedings.)

18 THE WITNESS: How far?

19 **Q.** BY MS. DO: Just to the end of the page.  
20 Have you done that?

21 **A. Yes.**

22 (Pause in proceedings.)

23 **Q.** BY MS. DO: The portion of the transcript  
24 I had you read was about your description to  
25 Detective Diskin of this girl; correct?

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1 **A. Yes.**

2 **Q.** And having read that, does it refresh  
3 your memory as to what specifically you told him?

4 **A. Yes.**

5 **Q.** And you told him that this girl came out,  
6 she tried to stand up before she got out, and she  
7 fell flat on her face; is that correct? What you  
8 just read.

9 **A. Yes.**

10 **Q.** And that she broke her tooth; correct?  
11 And that her mouth was bleeding; correct?

12 **A. Yes.**

13 **Q.** You did not tell Detective Diskin that  
14 she went unconscious. You said fell flat; correct?  
15 In the portion you just read.

16 **A. Correct.**

17 **Q.** All right. At the time of the sweat  
18 lodge in 2007, as you described yesterday, you  
19 saw -- and I can't remember the number -- many  
20 folks come out and they were in what you called  
21 "medical distress"; correct?

22 **A. Yes.**

23 **Q.** And at the time that you saw this  
24 happening in 2007, did you think that those folks  
25 could have died?

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1 **A. I have not experience with heat exposure**  
2 **so I don't know. But no. I didn't think they**  
3 **would die.**

4 **Q.** Okay. So -- but based upon what you just  
5 said, you don't have any experience to tell one way  
6 or another when someone coming out is showing  
7 symptoms of heat stroke or hyperthermia; correct?

8 **A. Correct.**

9 **Q.** All right. Now, I'm going to move to the  
10 2008 sweat lodge. You had indicated yesterday that  
11 what you saw in 2007 was the same thing that  
12 happened in 2008; correct?

13 **A. In regard to?**

14 **Q.** The disaster that you described.

15 **A. Yes.**

16 **Q.** Okay. And, by the way, after the 2007  
17 sweat lodge ended and you indicated, I think, to  
18 Ms. Polk yesterday that you were just shocked at  
19 what you saw; correct?

20 **A. Yes.**

21 **Q.** You must have then at that point -- you  
22 didn't call 911, I understand; correct?

23 **A. Correct.**

24 **Q.** But you must have at that point ran up to  
25 the office and grabbed Amayra or Michael Hamilton;

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1 correct?

2 **A. No.**

3 **Q.** You didn't. So did you ever tell them in  
4 the year 2007 that this has occurred at James Ray's  
5 sweat lodge and it was really alarming to you in  
6 2007?

7 **A. I can't remember if it was -- Amayra came**  
8 **by in 2007. She knew what was on. She actually**  
9 **brought down ice and aid for the girl's face.**

10 **Q.** The one that fell?

11 **A. Yes.**

12 **Q.** Now, if Miss Amayra Hamilton testified  
13 that when she was down at the 2007 sweat lodge and  
14 she saw no problems, 2007 was fine, would that be  
15 not correct?

16 **MS. POLK:** Judge, objection to the  
17 mischaracterization of the testimony of Amayra  
18 Hamilton.

19 **THE COURT:** The question may stand as a  
20 hypothetical.

21 You may answer that if you can.

22 **THE WITNESS:** What?

23 **Q.** BY **MS. DO:** If Mrs. Amayra Hamilton  
24 testified that she went down to the 2007 sweat  
25 lodge and from what she saw there weren't any

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1 problems, would that be inaccurate?

2 **A. In my opinion.**

3 **Q.** Would that be untruthful?

4 **A. I couldn't say if it's -- I mean, what**  
5 **one person thinks is -- I don't know.**

6 **Q.** Certainly inconsistent with what you saw?

7 **A. Yes. But she had experienced sweat**  
8 **lodges before. I hadn't.**

9 **Q.** So are you saying that perhaps because  
10 you hadn't experienced sweat lodges, what you saw  
11 was normal but to you not having been in a sweat  
12 lodge before, it wasn't normal?

13 **A. Yes.**

14 **Q.** All right. Now, when Mrs. Hamilton -- so  
15 you're saying for whatever reason you did not tell  
16 Mrs. Hamilton that 2007 was a disaster and 911  
17 should have been called? Did you ever tell her  
18 that?

19 **A. No.**

20 **Q.** All right. So after this happened and  
21 you thought 911 should have been called, you went  
22 back the next year to work another sweat lodge for  
23 Mr. Ray; is that correct?

24 **A. Yes.**

25 **Q.** And you volunteered?

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1 **A. Yes.**

2 **Q.** You didn't get paid?

3 **A. My husband was getting paid, and I**  
4 **volunteered.**

5 **Q.** Oh. I thought earlier when I asked  
6 you, you and Ted volunteered for 2008. That's not  
7 correct?

8 **A. No. Ted was an employee in Angel**  
9 **Valley in 2008.**

10 **Q.** Okay. So Mrs. Hamilton said he  
11 volunteered in 2008, that would also be incorrect?

12 **MS. POLK:** Same objection.

13 **THE COURT:** That part of the testimony I'm  
14 pretty sure I remember. And I don't think that's  
15 accurate.

16 **MS. DO:** Thank you.

17 **Q.** When you went back in 2008 -- and I  
18 apologize for my cough -- when you went back in  
19 2008, you personally were not being paid, so you  
20 did it strictly on a volunteer basis; is that  
21 correct?

22 **A. Correct.**

23 **Q.** So when you knew James Ray was coming  
24 back to Angel Valley, having seen what you say you  
25 saw in 2007, you certainly then warned Amayra

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1 Hamilton; correct?

2 **A. No.**

3 **Q.** You didn't say anything to her?

4 **A. Regarding?**

5 **Q.** What you had seen. What you say you saw  
6 at the 2007.

7 **A. She was there in 2007. So yes. No.**

8 **Q.** Okay. Thank you. So then the 2008 sweat  
9 lodge you said was -- and I might be  
10 paraphrasing -- exactly the same or the same as  
11 2007 -- correct? -- what happened at the end of the  
12 ceremony?

13 **A. Yes.**

14 **Q.** So it was as horrific and shocking to you  
15 as 2007?

16 **A. Yes.**

17 **Q.** It scared you quite a bit?

18 **A. Yes.**

19 **Q.** And you talked to Detective Diskin about  
20 the 2008 sweat lodge on October 9, didn't you?

21 **A. I don't recall. Probably. Yeah.**

22 **Q.** Okay. Let me help you with that.

23 Counsel, I'm referring to the same  
24 supplement. This time it's Bates stamp 195.

25 May I approach again?

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- 1 THE COURT: Yes.
- 2 Q. BY MS. DO: I'm going to show you a page
- 3 that's been Bates stamped by the state as 195 and
- 4 ask you to read this paragraph over here. I'll
- 5 hand you these glasses.
- 6 A. **That paragraph?**
- 7 Q. Yes. And just let me know when you're
- 8 done.
- 9 A. **I'm done.**
- 10 Q. You're done?
- 11 A. **Yes.**
- 12 Q. So does that help you remember that you,
- 13 in fact, did talk to Detective Diskin about the
- 14 2008 sweat lodge?
- 15 A. **Uh-huh.**
- 16 Q. Is that yes?
- 17 A. **Yes.**
- 18 Q. All right. And you told Detective Diskin
- 19 that there were 40 people you know all across
- 20 those -- and I assume that's the ground -- just
- 21 laying there -- you know -- convulsing, throwing
- 22 up, crying, eyes rolling back in their head and
- 23 there is nobody there to care for them; is that
- 24 correct?
- 25 A. **Yes.**

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- 1 Q. And, again, having seen that occur, you
- 2 thought, in your mind, 911 should be called?
- 3 A. **I wouldn't say I thought that 911 should**
- 4 **be called for those instances. I would say, in my**
- 5 **opinion, that's a dangerous situation.**
- 6 Q. That you would call 911 for?
- 7 A. **I wouldn't put the people in the**
- 8 **situation --**
- 9 Q. I understand. That's not my question.
- 10 It's having seen this as a witness --
- 11 A. **At least I would think they would have**
- 12 **medical assistance or first aid or an ambulance --**
- 13 **you know -- standing on by, in my opinion, is what**
- 14 **should have been there.**
- 15 Q. I understand. And that's because you saw
- 16 about 40 people in convulsions, throwing up,
- 17 crying, eyes rolling back?
- 18 A. **Yes.**
- 19 Q. And you said paramedics and medical help
- 20 would require someone to call 911; correct?
- 21 A. **Yes.**
- 22 Q. And again in 2008 you did not?
- 23 A. **Yes.**
- 24 Q. Ted did not?
- 25 A. **Yes.**

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- 1 Q. And Mr. Palisch, who was there, did not;
- 2 correct?
- 3 A. **Correct.**
- 4 Q. Now, how long would you say that those 40
- 5 people or so were laying across the ground in that
- 6 state that you've described as medical distress?
- 7 A. **Various lengths. Some people left right**
- 8 **away. Other people stayed half an hour. But they**
- 9 **had something else to do right afterwards. So if**
- 10 **someone had a roommate, they would -- you know --**
- 11 **help them get them to their room. But generally**
- 12 **half an hour.**
- 13 Q. Okay. But some people actually left
- 14 before the half hour, you're saying?
- 15 A. **Yes.**
- 16 Q. So some people just got up from whatever
- 17 condition you say they were in and were able to
- 18 walk by themselves back to their room?
- 19 A. **Yeah. Or we would ride people in carts**
- 20 **too. We had a couple golf carts, and we would give**
- 21 **them rides back to their room.**
- 22 Q. You did that?
- 23 A. **Me and, like, my daughter or Fawn.**
- 24 Q. Okay. And so while you're doing that,
- 25 are you away from the scene?

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- 1 A. **Talking 2008?**
- 2 Q. Yes.
- 3 A. **Yes.**
- 4 Q. While you're doing that, you would be
- 5 away from the scene; correct?
- 6 A. **Yes.**
- 7 Q. Let me ask you specifically. You
- 8 yesterday talked about a girl that went into
- 9 convulsions. Do you remember that?
- 10 A. **Yes.**
- 11 Q. And, again, because you're not a doctor,
- 12 I want to understand what you mean when you say
- 13 "convulsions" what are convulsions?
- 14 A. **I think I said she went into shock.**
- 15 Q. What does that mean?
- 16 A. **Well, that's what the doctor that was**
- 17 **there said, that she was in shock. But what I was**
- 18 **seeing was a girl who would spasm up, have no**
- 19 **control of her body. Her eyes were rolling in her**
- 20 **head. Then she'd come out of it and crying and be**
- 21 **somewhat coherent. But still her body would tense**
- 22 **up. She had no control over her body.**
- 23 Q. Was she on the ground when this was
- 24 happening?
- 25 A. **Initially. And then they put her in a**

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1 cart and took her to --

2 Q. I'm going to get to that. But when you  
3 say you saw what you think were convulsions, was  
4 she on the ground?

5 A. Yes.

6 Q. And she was visibly -- are you talking a  
7 little bit of shakes or was she really shaking?

8 A. **Not shaking. She was -- like her body  
9 would tense up like if someone is having an  
10 epileptic seizure -- you know. Something where --**

11 Q. Okay. So that's what -- you would  
12 describe it as an epileptic seizure?

13 A. **No. I would describe the muscles  
14 constricting -- her muscles were constricting out  
15 of her control.**

16 Q. I understand now. And, for the record,  
17 you had taken both of your arms, clenched both of  
18 your fists, had it about mid chest. Was that what  
19 you saw?

20 A. **She was rolled up in a ball -- you  
21 know -- like this. Other times she'd be like this.  
22 She did not have control of her body.**

23 Q. I understand. But both times you, again,  
24 indicated clenched fists; correct?

25 A. **Yes. Clenched muscles. I mean, her**  
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1 fists -- her muscles were convulsing in a way that  
2 were out of her control.

3 Q. I'm not trying to put words in your  
4 mouth. Did she have clenched fists or did she or  
5 not?

6 A. **Probably.**

7 Q. Okay. Now, you said that there was a  
8 doctor participant there; correct?

9 A. **Yes.**

10 Q. Now, what was the name of the doctor  
11 participant, if you know?

12 A. **Don't know.**

13 Q. Don't know. Was it a male or female?

14 A. **Male.**

15 Q. Can you give me a description?

16 A. **No.**

17 Q. So --

18 A. **There is a lot of commotion going on and  
19 a lot of people. No. I don't remember what he  
20 looked like.**

21 Q. Okay. How did you know he was a doctor?

22 A. **He said he was.**

23 Q. When did he tell you?

24 A. **I don't know if he told me specifically.  
25 But he walked up when I think one of the Dream**

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1 Team -- I don't remember exactly how it happened.

2 **One of the Dream Team and I think her roommate got  
3 her into the golf cart. And then somebody said  
4 they were -- the guy said he was a doctor. And he  
5 went with them, and then they all got them into a  
6 bathroom, and I left.**

7 Q. I really want to try to understand what  
8 you're saying. You're at the scene. You see this  
9 woman in what you described or believed to be  
10 convulsions. An unidentified man that you can't  
11 give a description comes up and tells somebody he's  
12 a doctor; correct?

13 A. **He told the group. There were several of  
14 us around trying to help her.**

15 Q. All right. And you're certain of that?

16 A. **Yeah.**

17 Q. Okay. And you've given that information  
18 to Detective Diskin?

19 A. **I don't recall. I don't think he asked  
20 those specific questions. You're getting into very  
21 much detail and asking me if I answered that  
22 question. And I --**

23 Q. Details are important. And I'm sorry.  
24 Let me ask you the next question. When you say  
25 they put her into the golf cart with Dream Team

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1 members, did you go into the cart?

2 A. **I think I went in a different cart.**

3 Q. Okay. You followed and you physically  
4 saw this woman in a bathtub?

5 A. **Yes.**

6 Q. Okay. And can you tell me what this  
7 woman's name was?

8 A. **No.**

9 Q. Can you give me a description?

10 A. **No.**

11 Q. The woman that was in the bathtub -- how  
12 long did she stay there?

13 A. **I don't know. I left.**

14 Q. So you left immediately; correct?

15 A. **Once she was in the bathtub, yes.**

16 Q. So for all you know, she was in the  
17 bathtub for half a second?

18 A. **Yes.**

19 Q. Firsthand knowledge; correct? And I  
20 think --

21 A. **Yes.**

22 Q. And I think what we've been hearing is  
23 that shortly or immediately after a sweat lodge  
24 ends, Mr. Ray, first of all, is always the first  
25 one to exit. Correct?

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1 **A. Yes.**  
 2 **Q.** Being that he sits right next to the  
 3 door? Yes?  
 4 **A. Yes.**  
 5 **Q.** And in the year 2007, as the year 2008,  
 6 he gets out of the sweat lodge and he immediately  
 7 gets in a golf cart and he leaves; correct?  
 8 **A. No.**  
 9 **Q.** No?  
 10 **A. No.**  
 11 **Q.** He stays around?  
 12 **A. Yes.**  
 13 **Q.** That's your testimony?  
 14 **A. He stays around a few minutes. Yes. He**  
 15 **doesn't, like, get out of the golf cart -- I mean**  
 16 **get out of the sweat lodge and get directly into a**  
 17 **golf cart. He gets out, stands around, drinks some**  
 18 **water. He's usually separate from the crowd. He's**  
 19 **not over talking to the people. Although sometimes**  
 20 **I remember seeing him talking to people.**  
 21 **Q.** So he's away from the crowd is what  
 22 you're saying?  
 23 **A. For the most part. When he gets out, he**  
 24 **goes and gets a drink of water. People start**  
 25 **coming out. He talks to them a little bit. But**

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1 **then he's usually in a different area. People will**  
 2 **come over and talk to him and stuff.**  
 3 **Q.** I understand.  
 4 **A. But he's usually --**  
 5 **Q.** So for the average time, you would say  
 6 he'd be out for a few minutes, and then he gets in  
 7 a his golf cart and he'd leave; correct?  
 8 **A. Yes.**  
 9 **Q.** And did you know whether that was because  
 10 he had to get ready for the next event the group  
 11 would be attending or not?  
 12 **A. I don't know.**  
 13 **Q.** No idea; right?  
 14 **A. No.**  
 15 **Q.** So you wouldn't be able to tell the Court  
 16 why Mr. Ray would leave the scene in 2007-2008  
 17 immediately after getting out of the sweat lodge;  
 18 correct?  
 19 **A. I didn't say he left immediately after**  
 20 **the sweat lodge. I said he stayed around and then**  
 21 **at some point him and -- I saw a Dream Team member**  
 22 **once. But I really don't know that I noticed when**  
 23 **James Ray left the area.**  
 24 **Q.** Okay. I understand. I didn't mean to  
 25 misstate what you've said. You said for a few

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1 minutes he'd stay around, then he would leave?  
 2 **A. Like everyone else. They leave.**  
 3 **Q.** Like everyone else; correct?  
 4 **A. Yes.**  
 5 **Q.** It's not a specific thing that Mr. Ray  
 6 was being callous when he was leaving? He was  
 7 leaving like everyone else; correct?  
 8 **A. There was nothing after the lodge to make**  
 9 **people stay a certain amount of time or tell you to**  
 10 **leave at a certain amount of time. When you felt**  
 11 **ready to leave as a participant, you left.**  
 12 **Q.** So --  
 13 **A. I don't know what James Ray -- when he**  
 14 **left, why he chose when he left to leave.**  
 15 **Q.** Understood. But from what you saw, he  
 16 did what every other participant who was ready to  
 17 leave did; correct?  
 18 **A. Yes. But he's a leader. He's not a**  
 19 **participant.**  
 20 **Q.** Now, so when this incident occurred that  
 21 you described, this woman who then was put into a  
 22 golf cart and went to the bathtub, was Mr. Ray  
 23 around for that?  
 24 **A. I don't recall where he was. But I know**  
 25 **he wasn't in my immediate area wondering how she**

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1 **was.**  
 2 **Q.** All right. So --  
 3 **A. I think she had short, dark hair. That**  
 4 **just came into my head.**  
 5 **Q.** For all you know, Mr. Ray did not see  
 6 that; correct?  
 7 **A. I don't know.**  
 8 **Q.** For all you know, he didn't know? One  
 9 way or another, you don't know?  
 10 **A. I don't know.**  
 11 **Q.** Okay. Now --  
 12 **A. I know his Dream Team knew.**  
 13 **Q.** I understand. That wasn't my question.  
 14 Now, in 2008 when you saw the scene that you've  
 15 described which, in your opinion, was the same as  
 16 the scene in 2007, did you think these people could  
 17 die?  
 18 **A. I can't answer that question. I mean --**  
 19 **Q.** You don't have the background --  
 20 MS. POLK: Could Ms. Do please let the witness  
 21 finish answering the question before he she  
 22 continues.  
 23 MS. DO: Sure. I'm sorry. I thought she was.  
 24 **Q.** Go ahead.  
 25 **A. I don't know how to answer that question**

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1 **because anyone can die at any point. But the --**  
 2 **what they go through in that -- it's a possibility.**  
 3 **Yes.**

4 Q. And you thought that in 2008; correct?

5 A. **I can't say I went in there thinking --**  
 6 **you know -- somebody is going to die.**

7 Q. At the end when you saw what you say you  
 8 saw?

9 A. **No. I don't think anyone was going to**  
 10 **die at that point. No.**

11 Q. Which is the reason you didn't call 911;  
 12 correct?

13 A. **Yeah. And I don't -- like the Dream Team**  
 14 **and James Ray control --**

15 Q. They're responsible?

16 A. **Yeah.**

17 MS. POLK: Judge, same objection. Could the  
 18 witness please finish answering the question before  
 19 Ms. Do jumps in?

20 MS. DO: I'm sorry.

21 THE COURT: Yes.

22 Q. BY MS. DO: Go ahead, Miss Mercer. I'm  
 23 sorry. Go ahead.

24 A. **Yes. If -- normally it would be out**  
 25 **of -- I mean, I wouldn't call 911 without telling**  
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1 **someone first unless I was the only one at the**  
 2 **scene and -- you know -- it was my only reaction.**

3 Q. So you wouldn't call -- if you saw people  
 4 that you thought could die, you would not call 911  
 5 unless you were there by yourself?

6 A. **Well --**

7 Q. Is that what you're -- I'm trying to  
 8 understand what you're saying.

9 A. **Can you rephrase the question, please.**

10 Q. Sure. Let me ask it this way --

11 A. **I don't understand what you're trying to**  
 12 **say.**

13 Q. I'm asking a question, not trying to say  
 14 something. If you were to go down -- if you're  
 15 just walking down the street somewhere and you see  
 16 someone in the condition you describe -- they're in  
 17 convulsions, they're throwing up, they're crying --  
 18 wouldn't you call 911?

19 A. **No. Because I don't know what their**  
 20 **situation is. I mean, that's coming up on someone**  
 21 **blind. In the sweat lodges it was an experience**  
 22 **that we had done before.**

23 Q. But in 2007 you hadn't.

24 A. **No. And it was a shock.**

25 Q. And you thought people were in bad shape  
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1 enough that 911 should have been called?

2 A. **In my opinion.**

3 Q. Okay. Now -- so the same thing in 2008.

4 You did not call 911; correct?

5 A. **No.**

6 Q. You didn't turn to Ted Mercer and say --

7 A. **No.**

8 Q. And say call 911; correct?

9 A. **Correct.**

10 Q. Also Mr. Palisch; correct?

11 A. **Yes.**

12 Q. Now, let me ask you some questions about  
 13 Mr. Palisch for just a moment. You've known him  
 14 for at least a couple of years; correct? Or more?

15 A. **Now? You're saying now?**

16 Q. As of 2009 how long had you known  
 17 Mr. Palisch?

18 A. **Yeah. Two years.**

19 Q. And was he someone that you considered  
 20 close?

21 A. **Yes.**

22 Q. You guys were close friends; correct?

23 A. **Yes.**

24 Q. And if I understand correctly,

25 Mr. Palisch was either part or full Native  
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1 American. Is that correct?

2 A. **I believe so.**

3 Q. And he had experience doing sweat lodges,  
 4 much more experience than you or Ted did; correct?

5 A. **Yes.**

6 Q. And so he has not only facilitated,  
 7 conducted, he's participated in the sweat lodges  
 8 himself; correct?

9 A. **In traditional sweat lodges, not in James**  
 10 **Ray sweat lodges.**

11 Q. Understood.

12 A. **Yes.**

13 Q. Now, Mr. Palisch was there in 2007. And,  
 14 to your knowledge, he didn't call 911; correct?

15 A. **No.**

16 Q. Mr. Palisch was there in 2008 and, to  
 17 your knowledge, he did not call 911; correct?

18 A. **No.**

19 Q. Did you in 2008 after having seen yet  
 20 again the scene that you've described -- did you  
 21 tell Mrs. Hamilton right then and there what was  
 22 going on?

23 A. **Mrs. Hamilton was there. And I don't**  
 24 **have a lot of conversations with her. So no.**

25 Q. You live on her property and you've  
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1 worked for her some years --

2 **A. It's not her property. Where I lived was**  
3 **not her property. It's a separate property**  
4 **enclosed in Angel Valley. But it's a separate**  
5 **property I rented from somebody else.**

6 **Q.** Thank you. I understand that. But it's  
7 on Angel Valley; correct?

8 **A. Yes.**

9 **Q.** And your testimony was that you didn't  
10 have many conversations with her; is that correct?

11 **A. I would try to avoid conversations.**

12 **Q.** Why was that?

13 **A. I personally don't get along with Amayra.**

14 **Q.** Okay. Now -- so you didn't think that it  
15 was important to make an exception to that having  
16 seen this now occur twice, two years in a row, to  
17 tell Mrs. Hamilton this is what's going on with  
18 James Ray sweat lodges?

19 **A. My feeling is Amayra Hamilton knows**  
20 **exactly what goes on in James Ray sweat lodges.**

21 **Q.** Okay. Let me ask you the question again.  
22 Did you tell Mrs. Hamilton yourself?

23 **A. There would be no need. She knows. No,**  
24 **I did not.**

25 **Q.** Thank you. I just have this last area  
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1 that I'd like to ask you questions, Mrs. Mercer,  
2 and then we'll be done.

3 Does the Court want to take a break or  
4 are we okay on time?

5 THE COURT: We did have one recess. Another 5  
6 or 10 minutes?

7 MS. DO: Sure.

8 THE COURT: Go ahead.

9 MS. DO: Okay.

10 **Q.** Now, on October 9 you talked to  
11 Detective Diskin, Mrs. Mercer. You described to  
12 him the 2008 scene, and you testified it was 40  
13 people in convulsions, throwing up, crying,  
14 et cetera; correct?

15 **A. Yes.**

16 **Q.** And you told him that you had photographs  
17 that would depict that scene; correct?

18 **A. Yes.**

19 **Q.** And that's the excerpt that I just had  
20 you read. You told him I have photographs that  
21 will show you 40 people laying across the ground in  
22 convulsions, throwing up, crying, eyes rolled back;  
23 correct? Yes?

24 **A. Yes.**

25 **Q.** And so you -- by the way, were these  
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1 photographs ones that you took?

2 **A. Yes.**

3 **Q.** All right. And so you told

4 Detective Diskin on October 9 that you had,  
5 essentially, evidence -- right? -- of what happened  
6 in 2008?

7 **A. I told him I had pictures of buildings.**  
8 **I told him I had pictures of the sweat lodge**  
9 **happening and -- yeah.**

10 **Q.** Mrs. Mercer, you told Detective Diskin --  
11 and if you'd like I can show it to you again -- I  
12 can show you pictures of previous lodges where  
13 there is 40 people -- you know -- all across those  
14 just laying there -- you know -- convulsing,  
15 throwing up, crying, eyes rolling back in their  
16 heads, and there is nobody there to care for them;  
17 correct?

18 **A. Yes.**

19 **Q.** And you later on again said to  
20 Detective Diskin that the pictures would show him  
21 exactly what you had seen in '08, which was the  
22 same as '07; correct?

23 **A. Yes.**

24 **Q.** These are photos you took?

25 **A. Uh-huh.**

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1 **Q.** Yes. Okay. You didn't tell

2 Detective Diskin that the photos you were going to  
3 forward to him were photos of people recovering;  
4 correct? That's not how you described the photos  
5 you had; correct?

6 **A. I can't recall. I mean, I know it's in**  
7 **that thing. But when I was saying I had pictures,**  
8 **I knew I had pictures of the event, which would**  
9 **include --**

10 **Q.** Miss Mercer, you said --

11 MS. POLK: Your Honor, same objection. Could  
12 she finish her answer.

13 THE COURT: Go ahead and finish your answer,  
14 ma'am.

15 THE WITNESS: The pictures I had would show  
16 people in distress as well as the sweat lodge  
17 before and the wood. He was asking questions about  
18 the type of wood that was used and the fire. So I  
19 know the pictures that I had would show all of  
20 that. Yes.

21 **Q.** BY MS. DO: Okay. So in addition, you  
22 gave him photos that showed -- and I think Ms. Polk  
23 has shown it -- of the frame, of the kiva; correct?

24 **A. Yeah.**

25 **Q.** Okay. And some photos of the sweat lodge  
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1 finished -- right? -- with the blankets and tarps  
 2 over it?  
 3 **A. Yes.**  
 4 **Q.** But the photographs of the participants  
 5 coming out of the sweat lodge. That's what I want  
 6 to focus on. You told Detective Diskin that those  
 7 photos would show exactly 40 people laying across  
 8 the ground in convulsions, throwing up, vomiting,  
 9 crying, eyes rolled back; correct?  
 10 **A. That's what the statement says.**  
 11 **Q.** Well, it's a taped statement. That's  
 12 what you said; correct?  
 13 **A. Yes.**  
 14 **Q.** You didn't tell Detective Diskin I'm  
 15 going to forward you photographs of people having  
 16 recovered, people -- right? Did you or did you  
 17 not?  
 18 **A. Not at that time. But in a phone**  
 19 **conversation I told him. After looking at the**  
 20 **pictures, I told him the pictures that I had.**  
 21 **Q.** Okay.  
 22 Your Honor, can we take the break now?  
 23 THE COURT: Yes. We can do that.  
 24 And take the recess.  
 25 Miss Mercer, please remember the rule of  
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1 exclusion I explained to you before. And let's  
 2 resume at five after 11:00. Thank you.  
 3 (Recess.)  
 4 THE COURT: The record will show the presence  
 5 of the attorneys. The witness has returned to the  
 6 witness stand.  
 7 You may continue cross-examination,  
 8 Ms. Do.  
 9 MS. DO: Thank you.  
 10 **Q.** When we took the break, Mrs. Mercer, we  
 11 were talking about the photographs you gave to  
 12 Detective Diskin?  
 13 **A. Yes.**  
 14 **Q.** And these were photographs you indicated  
 15 to him would show the 40 or so people in  
 16 convulsions and throwing up, crying?  
 17 **A. Yes.**  
 18 **Q.** Okay. I'm going to hand you eight  
 19 photographs that have been previously identified  
 20 and admitted, I believe, exhibits -- I'm sorry.  
 21 Excuse me. 71 through 78. Okay? Just take a look  
 22 at those and let me know if you recognize those as  
 23 the photographs you gave to Detective Diskin.  
 24 **A. Yes.**  
 25 **Q.** You've had a chance to review them all?  
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1 **A. Yes.**  
 2 **Q.** And those are, in fact, the photographs  
 3 you gave to Detective Diskin?  
 4 **A. Yes.**  
 5 **Q.** And in addition to those, you gave a few  
 6 more that showed the kiva being built; correct?  
 7 **A. Yes.**  
 8 **Q.** Now, you took these photographs; correct?  
 9 **A. Yes.**  
 10 **Q.** Were there any photographs you took of  
 11 the scene after people came out of the sweat lodge  
 12 that you did not provide to Detective Diskin?  
 13 **A. Not that I'm aware of.**  
 14 **Q.** You believe you gave him all the  
 15 photographs; correct?  
 16 **A. Yes.**  
 17 **Q.** Now, I'm going to show you another set of  
 18 photographs that were previously marked as exhibits  
 19 34 through 70. And take a quick look at those.  
 20 MS. POLK: Your Honor?  
 21 THE COURT: Yes?  
 22 MS. POLK: There is a photograph on the  
 23 overhead that is -- has a different number on it  
 24 than the photograph that the witness is looking at.  
 25 I would just request that the photographs that have  
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1 been admitted into evidence be used and not  
 2 photographs that are -- I don't challenge that  
 3 similar photographs have been admitted, but defense  
 4 71 is not one of our exhibit numbers.  
 5 MS. DO: We made all the corrections  
 6 yesterday. And perhaps the clerk can verify this.  
 7 And the exhibit tags that are the ones that  
 8 Mrs. Mercer is going through are consistent with  
 9 what's on the screen now.  
 10 THE WITNESS: I don't think these are my  
 11 pictures of all these people close up.  
 12 **Q.** BY MS. DO: I understand. I'm just  
 13 asking you to look through them for now.  
 14 **A. Oh.**  
 15 THE COURT: You indicated that was 34 through  
 16 70?  
 17 MS. DO: I'm sorry, Your Honor. The Court's  
 18 tab number for 71 through 78 would be tab 38 to 45.  
 19 And then the exhibits 34 through 70 are the Court's  
 20 tabs 1 through 37 in the binder.  
 21 THE COURT: Okay.  
 22 MS. DO: I apologize. I think we didn't  
 23 understand the rules, and we'll remember it next  
 24 time.  
 25 THE COURT: I'm following with Ms. Polk's  
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1 concern. A number of these exhibits have already  
 2 been admitted. But the numbers you gave me were  
 3 not the actual exhibit numbers that appear on the  
 4 back. These have all been marked now; is that  
 5 right?  
 6 MS. DO: Yes.  
 7 THE COURT: What are they marked on the back?  
 8 That's what I need to know.  
 9 MS. DO: As what's on the screen.  
 10 THE COURT: Okay.  
 11 Ms. Polk, you're saying this is an  
 12 unadmitted exhibit?  
 13 MS. POLK: No, Judge. I'm just confused. We  
 14 have exhibits that have been admitted, and on the  
 15 screen from Ms. Do's laptop is a photograph. It's  
 16 not the exhibit that's been admitted. It may be  
 17 identical to the one that's admitted. I'm just  
 18 confused. She's not using exhibits that have been  
 19 admitted here in court. She's using copies that  
 20 are from her laptop again, they may be identical.  
 21 I'm just confused about what we're looking at and  
 22 what exhibit number.  
 23 MS. DO: I don't think it would be any  
 24 different if I took this exhibit and put it on the  
 25 doc cam as opposed to feeding through my laptop.

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1 The witness can verify it's the same photo we're  
 2 looking at, Your Honor.  
 3 THE COURT: Let's just use the overhead and do  
 4 that so we know what exhibits we have. I just  
 5 don't want -- if there is any confusion about this,  
 6 let's just eliminate it.  
 7 MS. DO: It will take me a moment to switch  
 8 over.  
 9 Q. Miss Mercer, you've had a chance to look  
 10 at the photographs that you yourself took and  
 11 provided to Detective Diskin; correct?  
 12 A. Yes.  
 13 Q. And I also handed you a number of other  
 14 photographs that you did not take; correct?  
 15 A. Yes.  
 16 Q. And those were exhibits 34 through 70,  
 17 for the record. From looking through the  
 18 additional photographs I gave you, did it appear to  
 19 you that those were photographs of the scene that  
 20 you were photographing, that is, the end of the  
 21 2008 sweat lodge?  
 22 A. Yes. Although, I would add that that's  
 23 probably at a later time -- you know -- maybe half  
 24 an hour later. Because it looks like people are up  
 25 and moving around, which is -- you know -- takes

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1 time.  
 2 Q. All right. Let's go through them, then.  
 3 You have here what's been marked as exhibit -- the  
 4 Court has marked as Exhibit 71.  
 5 A. Uh-huh.  
 6 Q. And can you tell in this photograph that  
 7 you told Detective Diskin would show you the 40  
 8 people in convulsions, throwing up, in the state of  
 9 medical distress, which one of these people are you  
 10 referring to?  
 11 A. The ones laying on the ground and the  
 12 ones you can't see over in that tented area.  
 13 Q. Okay. So if you can -- I think if you  
 14 touch the screen, it will make a marking that  
 15 everyone can see. Can you using your finger touch  
 16 the people that you think are in the condition  
 17 you've described.  
 18 A. Described as?  
 19 Q. Convulsions, throwing up, vomiting.  
 20 A. Well, obviously they're not every one of  
 21 them. But they're in -- obviously not every one of  
 22 them is in convulsions, but they're in various  
 23 states of medical distress, I would say.  
 24 Q. Okay. So go ahead and point to it. Now,  
 25 with your finger you've managed to roll up two

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1 yellow arrows, and you've indicated on Exhibit 71  
 2 the two folks that are laying on the ground in the  
 3 middle of the photograph; correct?  
 4 A. Yes.  
 5 Q. Let me stop you there for a second. At  
 6 the time that you took this photograph -- you took  
 7 this photograph; correct?  
 8 A. Yes.  
 9 Q. At the time you took this photograph, you  
 10 actually thought that these two people were were on  
 11 the ground -- did you think they were unconscious?  
 12 A. There were some people -- these two  
 13 people I don't know if they were unconscious in  
 14 this picture. There were people in the scene who  
 15 were unconscious.  
 16 Q. Who in this?  
 17 A. I don't -- I mean, I can't tell from the  
 18 picture who was unconscious. I can't recall the  
 19 people, if that's what you're asking me to say is  
 20 who is unconscious. From looking at this picture,  
 21 I can't tell you that.  
 22 Q. Well, you did tell Detective Diskin you  
 23 had these photographs that would show the 40 people  
 24 in the medical distress, the state of medical  
 25 distress that you saw; correct?

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1 **A. Yes.**

2 **Q.** And so you were giving him these  
3 photographs to assist him in understanding what  
4 these people looked like, as you described them, in  
5 medical distress?

6 **A. My intention of giving him those**  
7 **photographs was to paint -- so he could see what I**  
8 **saw.**

9 **Q.** Okay. What you saw.

10 **A. It was to show him what I saw. The**  
11 **number 40 people in convulsions, you're taking it**  
12 **and saying I said 40 people and I said they were in**  
13 **convulsions -- when I said I have a picture of 40**  
14 **people, I didn't mean that I counted every person**  
15 **and there were 40 people and that each person was**  
16 **unconscious. That wasn't what my -- what I**  
17 **intended my testimony to be.**

18 **And my intention for giving him the**  
19 **pictures was to show him people in various states**  
20 **of distress, some being unconscious, some being in**  
21 **convulsions, some being okay because they had**  
22 **either sat out for most of the lodge or had been**  
23 **through the lodge.**

24 **Q.** Okay.

25 **A. So some of the people you're looking at**  
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1 **were not in the lodge for the majority of it.**

2 **Q.** I understand. And we're going to go  
3 through that. I didn't choose the number 40. You  
4 did. So are you saying when you told  
5 Detective Diskin that there were 40 people, and you  
6 will see them in those photos, was that an  
7 exaggeration?

8 **A. That was a generalization.**

9 **Q.** Not an exaggeration?

10 **A. Yes.**

11 **Q.** So how many people do you think now were  
12 in that state that you have described?

13 **A. I don't understand the question.**

14 **Q.** Well, you said it was a generalization;  
15 correct?

16 **A. Yes.**

17 **Q.** And since you're saying it's not really  
18 40, it was an over generalization; correct?

19 **A. No. I didn't say it was an over**  
20 **generalization. I said it was a generalization**  
21 **that I knew how many people went into the sweat**  
22 **lodge and that about 40 of them were not the**  
23 **picture of health and they were in some various**  
24 **states of medical distress.**

25 **Q.** Okay. I'm not going to read that excerpt  
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1 back to you, but you did tell him the pictures  
2 would show 40 people in convulsions, throwing up.

3 **A. Okay.**

4 **Q.** So let's look at this photograph,  
5 Exhibit 71. You already indicated the two people  
6 on the ground were people that you would describe  
7 as being in medical distress; correct?

8 **A. Yes.**

9 **Q.** Who else in this photograph?

10 Now you've indicated three -- slow down  
11 for a second. Sorry. I'm trying to narrate so we  
12 have a clear record. You have now indicated three  
13 additional people in the background to the right of  
14 the photograph; correct?

15 **A. Yes.**

16 **Q.** And then you've also put two more  
17 markings to the background of the photograph in  
18 the -- on the left side of the photograph; is that  
19 correct?

20 **A. Yes.**

21 **Q.** Now, in this picture with what you've --  
22 now one, two, three, five, seven people in medical  
23 distress, you stood there and took a photograph; is  
24 that correct?

25 **A. Yes.**

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1 **Q.** So instead of calling 911, you stood  
2 there and you took a photograph?

3 **A. Yes.**

4 **Q.** All right. Do you see the man right here  
5 that I just put an arrow on?

6 **A. No, I didn't. Oh. Yeah.**

7 **Q.** I indicated a man to the far left of the  
8 photograph. He's standing without a shirt, shaved  
9 head. He's holding a camera; correct?

10 **A. I can't see.**

11 **Q.** Do you want your glasses -- Mr. Kelly's  
12 glasses?

13 **A. You're talking about the guy you put the**  
14 **arrow on? He's got a camera?**

15 **Q.** Yes.

16 **A. It looks like it. Yes.**

17 **Q.** Okay. I can zoom in. Do you want me to  
18 do that?

19 **A. I guess it's a camera. Yes.**

20 **Q.** Okay. And he's taking a photograph of  
21 the two people that you put an arrow, the ones  
22 laying on the ground plus the woman who is sitting  
23 on her --

24 **A. I don't know who he's taking a picture**  
25 **of.**

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1 Q. Does it appear that he's directing the  
2 camera at their general location, Mrs. Mercer?  
3 A. Yes.  
4 Q. And the person that I'm now putting an  
5 arrow on, this woman, or a dot --  
6 A. Yes.  
7 Q. She's sitting on her buttocks with her  
8 knees up, and she's propped herself up with her  
9 arms or biceps; correct?  
10 A. Yes.  
11 Q. Do you see a smile on her face?  
12 A. Yes. **Happy it's over.**  
13 Q. Do you see a smile on her face?  
14 A. Yes.  
15 Q. Okay. Did you say something else?  
16 A. **I said I think she's happy it's over.**  
17 Q. Okay. You think she happy it's over?  
18 A. **That was my interpretation of the smile.**  
19 Yes.  
20 Q. So when you stood here and took this  
21 photograph of the seven people you say are in  
22 medical distress, did you think about putting your  
23 camera down and going and assisting any of these  
24 people?  
25 A. **Like I said, this picture was probably**  
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1 **half hour later whether people are -- you know --**  
2 **some people had left, and people are obviously**  
3 **getting up and getting their belongings and --**  
4 **because those are off to the side. So no --**  
5 **What was the question?**  
6 Q. There wasn't one I think.  
7 A. **Just babbling.**  
8 Q. Let me go to Exhibit 72, which is another  
9 photograph you took; correct?  
10 A. Yes.  
11 Q. Again, the man that I've just put a  
12 yellow dot on, same guy from the earlier picture  
13 taking yet another photograph?  
14 A. Yes.  
15 Q. And you standing among in this scene also  
16 taking photographs?  
17 A. Yes.  
18 Q. Exhibit 73. You took this photograph  
19 too?  
20 A. Yes.  
21 Q. And in this photograph it appears that  
22 there are about seven people -- four women who are  
23 sitting sort of in a circle and three other people  
24 laying down in various positions; correct?  
25 A. Yes.  
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1 Q. And so you stood there and you took this  
2 photograph of these people that you thought were in  
3 medical distress?  
4 A. Yes.  
5 Q. Rather than call 911?  
6 A. Yes.  
7 Q. Rather than go up and get Amayra Hamilton  
8 to come down?  
9 A. Yes.  
10 Q. Rather than tell Mr. Mercer to call 911?  
11 A. Yes.  
12 Q. Exhibit 74. Another one you took?  
13 A. Yes.  
14 Q. Who in this photograph do you think is  
15 experiencing convulsions or throwing up or crying?  
16 A. **As I said, this was a while after. I**  
17 **would say this person sitting down over behind the**  
18 **fellow -- this person.**  
19 Q. You've indicated someone on the far right  
20 who we see --  
21 A. **The far right and the far left.**  
22 Q. Okay.  
23 A. **Yes. If they have a towel on their head,**  
24 **they're not feeling good.**  
25 Q. That's your testimony?  
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1 A. Yes.  
2 Q. Okay. It might not just be because  
3 they're cooling off?  
4 A. No.  
5 Q. Now again, you said --  
6 A. **The towel wasn't cool.**  
7 Q. You stood there with -- now in photograph  
8 74 -- with about two people you've identified as  
9 medical distress and just took photographs?  
10 A. Yes.  
11 Q. And would that be consistent if I asked  
12 you the same questions as to the remainder of the  
13 photographs you took?  
14 A. **Would what be consistent?**  
15 Q. With watching what you say you saw as  
16 medical distress, you just stood there and took  
17 photographs?  
18 A. Yes.  
19 Q. Okay.  
20 A. **That was after. I mean --**  
21 Q. I understand.  
22 A. **It was a considerable time after the**  
23 **sweat lodge was over that those pictures were**  
24 **taken. I'd say half an hour.**  
25 Q. That's what your testimony is today.  
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1 On October 9 you told Detective Diskin that they  
2 were photographs of the scene that you described as  
3 being the disaster; correct?

4 **A. Yeah. But I don't think I specified how**  
5 **long the picture -- you know -- how long it was**  
6 **after -- I don't think I told him how long it was**  
7 **after the sweat lodge was over that I took the**  
8 **pictures. But I know it was at least half an hour**  
9 **because I was -- you know -- I was feeling like I**  
10 **was done. And the one girl that was there helping**  
11 **was from Australia -- Switzerland. And she wanted**  
12 **pictures of the crazy Americans.**

13 **Q.** Okay. Mrs. Mercer, when you spoke to  
14 Detective Pam Edgerton on October 8 at the  
15 hospital --

16 **A. Yes.**

17 **Q.** -- you talked about much more than what  
18 we've already heard today -- correct? -- about  
19 hearing the moaning and groaning inside the sweat  
20 lodge, groaning inside the sweat lodge that was  
21 normal and usual to you; correct?

22 **A. For James Ray's, yes.**

23 **Q.** Okay. Detective Edgerton also asked you  
24 about the fact that you had done the sweat lodge  
25 with James Ray in 2007 and 2008, and this would

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1 have been your third year; correct?

2 **A. Yes.**

3 **Q.** And she also asked you and Mr. Mercer,  
4 your husband -- you were both there giving the same  
5 statement, essentially; correct?

6 **A. Yes.**

7 **Q.** You finishing his sentences?

8 **A. Yeah. It didn't seem like a real**  
9 **interview. It was more like she just wanted to see**  
10 **what had happened. It didn't feel like an**  
11 **interview where I was supposed to say everything I**  
12 **knew in as much detail as Detective Diskin and the**  
13 **prosecutor has asked.**

14 **Q.** Okay. So you knew she wanted to know  
15 what happened on October 8, 2009; right?

16 **A. I knew she was trying to figure out what**  
17 **happened. Yeah.**

18 **Q.** She wanted to know what caused these  
19 three people to die; correct?

20 **A. Well, at that point three people weren't**  
21 **dead.**

22 **Q.** You're correct. What caused the two  
23 people and the many others who went to the hospital  
24 sick; correct?

25 **A. My interpretation of what she was asking**

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1 **me was what my role was there. Like I said, I**  
2 **didn't feel like it was a complete interview or**  
3 **complete statement and --**

4 **Q.** Mrs. Mercer, is there any reason --

5 **MS. POLK:** Judge, can the witness finish her  
6 answer?

7 **MS. DO:** Sorry. I thought she was.

8 **THE WITNESS:** I don't know that she was --  
9 like I said, my impression was it was more just  
10 like a first -- you know -- you were there. What  
11 happened. It wasn't all the details. Because I  
12 couldn't remember -- you know. Like I said, it was  
13 in the moment. There was a lot of emotions.

14 Things were happening. And I no way considered  
15 that a complete statement and assumed I would  
16 either be being contacted by someone else or, like,  
17 in the next day we talked to Detective Diskin.

18 **Q.** BY **MS. DO:** Is there any reason why you  
19 are, from what appears to me, kind of distancing  
20 yourself from that earlier statement to  
21 Detective Edgerton?

22 **MS. POLK:** Judge, object to the form of the  
23 question.

24 **THE COURT:** Just a second. There is an  
25 objection. Overruled.

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1 You may answer that.

2 **THE WITNESS:** I don't feel like I am.

3 **Q.** BY **MS. DO:** Okay.

4 Your Honor --

5 **A. I feel like I'm explaining. I feel like**  
6 **you're trying to take what I said at the hospital**  
7 **as the complete story, no more details. That's**  
8 **everything she remembers. And I'm trying to say**  
9 **that I didn't feel that was the intent of that**  
10 **interview.**

11 **It was -- the fact. I didn't feel it was**  
12 **my complete interview at that time. And that's the**  
13 **point I'm trying to make. I'm not trying to say**  
14 **I -- I didn't say that. And I don't remember**  
15 **specifically the questions she asked me or how she**  
16 **asked me them. If you're asking me that, I have to**  
17 **say I don't know. I'm not trying to discount that**  
18 **statement at all.**

19 **Q.** Okay.

20 Your Honor, pursuant to 104(a), at this  
21 time I'd ask to -- the state's marked additional  
22 exhibits. So I'm going to ask to mark this  
23 transcript of the October 8, 2009, interview of Ted  
24 and Debbie Mercer by Detective Pam Edgerton as the  
25 next in order.

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1 THE COURT: 122.  
 2 MS. DO: 122. And I'm going to provide the  
 3 Court and counsel with a copy.  
 4 May I approach?  
 5 THE COURT: Yes. Thank you.  
 6 MS. POLK: Your Honor?  
 7 THE COURT: Yes, Ms. Polk.  
 8 MS. POLK: She's playing a portion. It's not  
 9 clear where the -- why the witness is being  
 10 confronted with a prior statement. Has there been  
 11 an inconsistent statement? And if so, what is it?  
 12 It's not clear to me why we're suddenly playing an  
 13 audio in the courtroom.  
 14 THE COURT: I don't know that you're ready to  
 15 play that now without further background. Ms. Do,  
 16 what is your --  
 17 MS. DO: First of all -- I'm sorry, Your  
 18 Honor. The audio is approximately 23 minutes.  
 19 It's the full interview conducted of  
 20 Detective Edgerton. It was provided to the defense  
 21 by the state. The state has full knowledge of  
 22 what's contained in the statement.  
 23 I think once the Court hears the  
 24 statement, the Court is going to understand why it  
 25 is highly relevant and it is a prior inconsistent  
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1 statement.  
 2 THE COURT: Ms. Polk, you're seeing this  
 3 transcript for the first time right now; correct?  
 4 MS. POLK: Judge, I am. And additionally,  
 5 there is not a prior inconsistent statement that  
 6 would justify playing the entire audio of an  
 7 interview. This witness has not denied that she  
 8 made the statement. She has not denied that any of  
 9 the statements contained in the audio and the  
 10 transcript -- she hasn't denied that she made them.  
 11 There is nothing inconsistent to allow Ms. Do to  
 12 proceed now to play for the Court an entire audio.  
 13 MS. DO: Your Honor, if I may state this: The  
 14 state has indicated to the defense for the first  
 15 time today that it is going to withdraw  
 16 Detective Diskin as a witness and that it intends  
 17 to put in his place approximately 21 witnesses for  
 18 which they will give the Court audio transcripts --  
 19 I'm sorry -- audiotapes and transcripts and ask the  
 20 Court to consider that.  
 21 I don't understand how the state can use  
 22 104(a) when it's convenient and not when we are  
 23 attempting to do the exact same thing. It either  
 24 applies or doesn't apply.  
 25 Here we have a witness on the stand who  
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1 actually made the statement and can be confronted  
 2 and cross-examined about it. And I'm offering the  
 3 Court that this statement is not only inconsistent,  
 4 it's highly relevant to establishing credibility  
 5 and bias.  
 6 I'm not -- can't recall the exact Arizona  
 7 evidence rule, but I think that the rule states  
 8 that I can impeach the witness before or after  
 9 giving her an opportunity to deny the statement.  
 10 If the Court wants, I can take a look and  
 11 pull up the exact evidence rule. But I think we're  
 12 either going to not use 104(a) or we are.  
 13 THE COURT: It's Rule 613.  
 14 But, Ms. Polk, I want to ask. The  
 15 evidence -- Ms. Do has just indicated you intend to  
 16 offer a number of statements which would be  
 17 hearsay. But --  
 18 MS. POLK: Yes, Judge. And my objection to  
 19 this audio. I have no objection if the Court -- if  
 20 Ms. Do wants to move for the admission of the  
 21 transcripts and the audio. I have no objection to  
 22 their admission.  
 23 My admission is -- my objection is to the  
 24 improper impeachment of a witness. You only  
 25 impeach a witness with a prior inconsistent  
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1 statement if, in fact, that statement is  
 2 inconsistent with a statement she's making from the  
 3 stand. She has not denied that she made the  
 4 statements at the emergency room on the early  
 5 morning hours of October 9. She's not denied that.  
 6 There is nothing inconsistent to confront her with.  
 7 She has explained why it is not a more  
 8 lengthy interview. She hasn't denied anything in  
 9 it. There is no reason to proceed with trying to,  
 10 quote, "impeach her with it."  
 11 So my objection is that it's improper  
 12 impeachment. I have no objection to admit it. If  
 13 the Court wants to hear it, there is nothing in it  
 14 I object to it except that we're about to listen to  
 15 24 minutes for no good purpose.  
 16 THE COURT: The actual recording has not been  
 17 marked, has it?  
 18 MS. DO: Your Honor, you're correct. May I  
 19 have that marked as the next, 123.  
 20 THE COURT: Yes. Transcript will be 122. The  
 21 CD, 123. And I'm going to admit those both.  
 22 (Exhibits 122 and 123 admitted.)  
 23 THE COURT: And I'll consider them. But I can  
 24 listen to those outside court just as I would the  
 25 other evidence that's offered. Is there any reason  
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1 to have that played here right now?  
 2 MS. DO: I believe once it's admitted, it's  
 3 publishable. And I think it is very significant  
 4 for the defense to be able to then after having the  
 5 witness listen to this tape continuing questioning.

6 The rules specifically state that the  
 7 witness must be given an opportunity to admit or  
 8 deny the statement, answer additional questions.  
 9 The rule doesn't say that I have to do that before  
 10 I play the impeaching statement.

11 THE COURT: The rule says if you're going to  
 12 offer extrinsic evidence, the witness has to be  
 13 given an opportunity to explain first. And I think  
 14 there have been some inconsistencies. Just hasn't  
 15 been presented in the normal fashion. I would have  
 16 to go back through my notes and review that.

17 But I don't know why, Ms. Do, there  
 18 wouldn't be a question about what you believe the  
 19 evidence shows or in good faith you want to ask.  
 20 And that's what's needed for a cross-examination  
 21 question. And if there is an inconsistency, it can  
 22 be pointed out in the normal fashion of impeachment  
 23 rather than playing all of this at this time.

24 I will consider this. If it's  
 25 inconsistent with other things, you can argue that

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1 to me, and I can look at the testimony that's been  
 2 presented. But I don't see any need to play the  
 3 entire tape. It just seems -- I don't see that.

4 MS. DO: May we have a moment, Your Honor.

5 THE COURT: Yes, you may. I'll going to admit  
 6 both of these, and it will be considered, just as  
 7 other evidence.

8 MS. DO: Thank you, Your Honor. Let me try  
 9 and proceed in the manner the Court's outlined.

10 Q. Mrs. Mercer, when you spoke to  
 11 Detective Edgerton, do you remember  
 12 Detective Edgerton asking you the question of what  
 13 was different today than the previous two with  
 14 James Ray? Do you remember that?

15 A. I don't remember asking specifically, but  
 16 I remember searching my mind for an answer.

17 Q. And that question, what was different  
 18 with today than James Ray previous sweat lodges are  
 19 essentially questions that Ms. Polk has also asked  
 20 you; correct? Similarities and differences among  
 21 the three James Ray sweat lodges you've been  
 22 involved in? Yes?

23 A. I forget the question.

24 Q. That question of what was different or  
 25 similar between James Ray's sweat lodge in 2009 to

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1 the 2007 and 2008 -- that question has been posed  
 2 to you by the state; correct?

3 A. Yes.

4 Q. Ms. Polk has asked you that?

5 A. Yes.

6 MS. POLK: Your Honor, excuse me. Could I  
 7 have a reference to the location for that statement  
 8 you made?

9 MS. DO: Page 10, line 8.

10 Q. And when Detective Edgerton asked you  
 11 that very same question, the first night you told  
 12 anyone about what you saw or heard, what you  
 13 thought about the sweat lodge on October 8, what  
 14 was different today than the previous two with  
 15 James Ray? Do you remember what you said?

16 A. No. I remember I was trying to think  
 17 about what was different. And at that time I was  
 18 thinking more, I think, about the construction, if  
 19 there was something different about the materials  
 20 used or the construction or things like that.

21 Q. Mrs. Mercer, you and Ted Mercer that  
 22 night answered that question. And you told  
 23 Detective Edgerton the only thing that was  
 24 different with the 2009 sweat lodge was the wood  
 25 that you and Mr. Mercer burned.

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1 A. That's what I was referring to. Yes.

2 Q. And that's what you told them?

3 A. That's what I considered her context of  
 4 the question to be. I mean, obviously it was  
 5 different because nobody had been burned before.  
 6 Nobody had said they're having a heart attack  
 7 before, and nobody had been pulled out unconscious  
 8 before.

9 So when she was asking what was  
 10 different, in my mind went to my function of it,  
 11 which is -- you know -- the wood and putting the  
 12 tarps on and -- you know -- was anything added to  
 13 the fire. It was more that kind of thing. I  
 14 didn't think that that was what -- that was in the  
 15 scope my answer was referring to.

16 Q. Well, let me read to you what you and  
 17 Mr. Mercer said in answer to that question and see  
 18 if it refreshes your memory. Okay?

19 MS. POLK: Your Honor, if the witness wants to  
 20 be refreshed, can she see the statement and see if  
 21 it refreshes her recollection.

22 THE COURT: She can. I think she's had an  
 23 opportunity to explain it. Yes. She may see the  
 24 statement at this point.

25 Q. BY MS. DO: I'm going to hand you

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1 Exhibit 122, starting at page 10. I'm going to  
2 have you read starting at line 8 to page 11 to line  
3 13. Okay? You have your glasses?

4 A. Uh-huh.

5 Q. Let me know when you're ready.

6 A. Okay.

7 Q. The portions I had you read do accurately  
8 reflect what you said to Detective Edgerton -- you  
9 and your husband; correct?

10 A. Yes.

11 Q. And you said when she asked what was  
12 different today than the previous two with James  
13 Ray, your husband: I think it was the wood.

14 Detective Edgerton: The wood that was  
15 used to heat the rocks?

16 Ted Mercer: Usually we usually use tree  
17 wood; right? And there has been a whole bunch wood  
18 that they used to build the cabins with that was  
19 left over for a long time. And you said that was  
20 backed up.

21 Ted: And that's what he told us to use  
22 is that wood and -- you know -- we burned that wood  
23 before but along with other stuff. So -- you  
24 know -- I know that -- I don't know.

25 Debbie Mercer: That's the only thing  
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1 that -- and Ted finishes your sentence. That's the  
2 only thing that was different was the wood that we  
3 used because it was this block wood. And usually  
4 we use tree wood.

5 Detective Edgerton: Is it -- but he  
6 doesn't bring the wood with him, does he?

7 Ted: No.

8 Detective Edgerton: So where is --

10 Ted Mercer: It was on the property

11 Debbie Mercer: There were some cabins  
12 that weren't made

13 Ted Mercer: Yeah. They had a whole --  
14 they had a huge pile of wood there that had been  
15 sitting there for years. And when they stopped  
16 construction, they just let it sit there. So they  
17 didn't know what else to do with it. So they've  
18 been burning it

19 Edgerton: Okay. But when James Ray  
20 comes, does he usually say -- I mean, how does he  
21 gather the wood that he's going to use?

22 Ted Mercer: He doesn't. Michael  
23 Hamilton is the

24 Edgerton: So Angel Valley is in charge  
25 of getting the wood for him for these things?

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1 Ted Mercer: Yeah. For getting the wood

2 Edgerton: And this time Michael says

3 okay. He wants wood but -- you know -- we've got

4 all this wood. Let's go ahead and use it. Or did

5 James Ray say --

6 Ted Mercer: No. No. It was Michael

7 Hamilton telling our friend Rotillo that works out

8 there to tell him to cut up this wood and place it

9 here. He goes use this wood here because he as to

10 direct Rotillo. He doesn't speak good English and

11 everything so he -- you know -- he's got to direct

12 him to tell him what to do

13 Edgerton: What's Michael's last name?

14 Ted Mercer: Hamilton.

15 That's what you told Detective Edgerton

16 when she asked you what was different about James

17 Ray's sweat lodge that could have caused the

18 injuries that occurred at that evening; correct?

19 A. Yeah. And, as I said, my interpretation  
20 of her question was the scope of the construction  
21 and what was different. That was how I considered  
22 her question.

23 Q. Well, do you want to look at the rest of

24 the transcript? Preceding that Detective Edgerton

25 was asking you what could have caused these people

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1 to become so sick and injured.

2 A. And I probably said I don't know.

3 Q. What you said is I think it was the wood

4 is what we just read. Is that correct?

5 A. Yes.

6 Q. And it was in this interview also that

7 you never mentioned that people were inside the

8 sweat lodge yelling out that folks were unconscious

9 or that James Ray said let them be; is that

10 correct?

11 A. That's correct. But, again, I ask you to  
12 remember the context of this interview. I didn't  
13 feel it was a official interview. It was after the  
14 event. Emotions were high. And I would say I was  
15 in a very emotional state.

16 Q. Would that have affected your ability to  
17 tell the truth?

18 A. Not to tell the truth. But I don't think  
19 I would have had as clear a head to answer  
20 questions. I mean, I was very emotional.

21 Q. This is the reason why I wanted to play  
22 the tape. I think the demeanor of the witness is  
23 important.

24 THE COURT: You may play a portion of it.

25 MS. DO: Thank you. I need to figure out how

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1 to cue it up if we're not playing the whole tape.  
2 THE COURT: You can start it. Again, I'll  
3 listen to the tape. I'll listen to the whole tape  
4 myself.

5 MS. DO: Okay. If I can have a moment, I'll  
6 cue it up so as to save the Court time.

7 THE COURT: Okay.

8 MS. DO: Thank you.

9 For the record, I'm going to be playing  
10 the tape from 11 minutes, 31 seconds.

11 THE COURT: Where is the starting point?

12 MS. DO: It will be on the transcript, page  
13 10, line 8.

14 THE COURT: Thank you.

15 (Audio recording played.)

16 Q. BY MS. DO: We just listened to the  
17 demeanor and the exact statement that you gave to  
18 Detective Edgerton; correct?

19 A. Yes.

20 Q. You then had another conversation with  
21 Detective Diskin on October 19; is that correct?

22 A. Yes.

23 Q. And in that October 19 conversation,  
24 Detective Diskin told you explicitly that you would  
25 not be criminally charged. You were not the

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1 subject of their investigation; correct? Do you  
2 remember that?

3 A. I remember a conversation. Yes.

4 Q. Detective Diskin told you that they  
5 weren't going to be looking at you or your husband;  
6 correct?

7 A. I don't know if he said those exact  
8 words, but I got the impression that --

9 Q. That you were off the hook?

10 A. No. I wouldn't consider me on a hook.

11 Q. What did you think he meant when he said  
12 to you that he didn't think you had anything to  
13 worry about because you wouldn't be criminally  
14 charged?

15 A. Oh. Because I was wondering whether I  
16 should get a lawyer.

17 Q. And he told you that you should?

18 A. He said it's advisable to talk to a  
19 lawyer.

20 Q. Thank you.

21 I have nothing further.

22 THE COURT: Ms. Polk, redirect?

23 MS. POLK: Yes, Judge. Thank you.

24

25 ///

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1 REDIRECT EXAMINATION

2 BY MS. POLK:

3 Q. Miss Mercer, just briefly. You were -- a  
4 portion of the transcript or the audio from the  
5 initial interview that occurred sometime late  
6 October 8 or the early morning -- early morning  
7 hours of October 9, 2009, was just played for you.

8 And you have tried to explain your  
9 perception of what that interview was about. Would  
10 you tell The Court what you understood when you  
11 were in the hospital what that interview was about?

12 A. In my opinion, it was more of fact  
13 gathering, trying to find out what happened, why  
14 everyone had -- why people had gotten hurt -- you  
15 know -- what was different. In my -- the only  
16 thing I could think of at the time was -- you know  
17 -- how the sweat lodge was built. That was the  
18 only thing I could think of.

19 Q. And prior to being asked by  
20 Detective Edgerton about what was different in the  
21 sweat lodge, do you recall whether you told her  
22 about what had actually happened at the sweat  
23 lodge?

24 A. No. She didn't ask specific questions  
25 that I -- I don't recall her asking specific

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1 questions about -- you know -- did you see this  
2 or -- it was more trying to figure out the scene  
3 and what had happened. It was an initial  
4 interview, I thought, of -- you know -- give me  
5 your story of what you saw.

6 Q. Was the only thing you talked to her  
7 about the wood? Or did you also talk to her about  
8 what happened when the sweat lodge ceremony was  
9 over and how you pulled people out?

10 A. Yes. I believe we talked about that.  
11 Like I said, it was more of a -- I thought it was a  
12 description of the scene that had happened.

13 Q. And if you saw a transcript of that  
14 interview, would that help you remember what was  
15 asked and what was answered?

16 A. Yes.

17 Q. Your Honor, I'd like to show the witness  
18 Exhibit 122, which is the transcript of that audio  
19 recording that was just played in court.

20 THE COURT: Okay.

21 Q. BY MS. POLK: Let me just have you take a  
22 few moments. Read through starting at the bottom  
23 of page 8, and then read up -- just read up through  
24 pages to help you refresh your memory about what  
25 you talked about with Detective Edgerton.

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1 **A. Okay. To the bottom of 15, you said?**

2 **Q.** Miss Mercer, before coming to court  
3 today, had you ever seen a transcript of the  
4 interview conducted by Detective Edgerton that  
5 night?

6 **A. No.**

7 **Q.** And had you had a chance to listen to the  
8 audio of it?

9 **A. No.**

10 **Q.** Now that you've had a chance to look at  
11 the transcript, does that refresh your recollection  
12 as to whether or not you talked about more than  
13 just the wood when you were interviewed at the  
14 hospital that night?

15 **A. Yes.**

16 **Q.** And specifically did you tell  
17 Detective Edgerton about the intense heat in the  
18 sweat lodge ceremonies performed by James Ray?

19 **A. Yes.**

20 **Q.** And what did you tell Detective Edgerton?

21 **A. I told -- it's an extreme, extreme sweat  
22 lodge.**

23 **Q.** Did you use the word "cook"?

24 **A. Yes.**

25 **Q.** And what did you say?

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1 **A. That James Ray cooks the people, meaning  
2 the heat -- that it's really, really hot, hotter  
3 than any other sweat lodge ever -- I mean, hotter  
4 than any traditional sweat lodge.**

5 **Q.** And did you also talk to  
6 Detective Edgerton that night about past events and  
7 people passing out, eyes rolling back in their  
8 head?

9 **A. Briefly.**

10 **Q.** And do you recall -- will you tell the  
11 Court what you -- or maybe you can find it on the  
12 transcript where you talked about that. I'd refer  
13 you to page 12.

14 **A. Okay. Yeah. When someone is coming out  
15 and their eyes are rolling back in their head, you  
16 grab them and pull them out. But they -- then they  
17 always have their Dream Team then. They are his  
18 people to take care of his people. So it's --**

19 **And Edgerton: Have anything -- like have  
20 people had to be transported before?**

21 **No.**

22 **Ted: No. Never had to be transported.**

23 **Debbie: I think they should have been.**

24 **Ted: I think they should have been.**

25 **Debbie: Last year like when Caroline**

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1 **inaudible.**

2 **Ted Mercer: Convulsions. Oh, she was  
3 bad. But they --**

4 **Debbie Mercer: Shock. And then --**

5 **Ted Mercer: But there was someone to  
6 take care of her. But then there was two other  
7 women that couldn't tell me what their names were  
8 after it was done until the next day -- you know --  
9 so they --**

10 **Edgerton. Okay.**

11 **Debbie: It's an extreme, extreme sweat  
12 lodge.**

13 **Edgerton: All right.**

14 **Keep going.**

15 **Q.** No. That's good. And, Miss Mercer, you  
16 were asked a question by the defense attorney  
17 suggesting that Detective Edgerton had specifically  
18 asked you what caused people to die. Would you  
19 agree that that question was never asked of you in  
20 the interview that night in the emergency room?

21 **A. No. I think I was asking that question  
22 why did they die. Because we were trying to figure  
23 it out.**

24 **Q.** But you would agree that you were not  
25 asked by Detective Edgerton to explain why people

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1 died?

2 **A. At that point they hadn't died. I think  
3 one was pronounced at the scene. But I don't  
4 recall that.**

5 **Q.** The questions from Detective Edgerton  
6 centered more specifically on the construction of  
7 the sweat lodge. Would you agree with that?

8 **A. Yes.**

9 **Q.** And then it was the next day,  
10 October 9th, that Detective Diskin was out at Angel  
11 Valley?

12 **A. Yes. And I apologize. Earlier I said I  
13 found him. And I think my husband initially talked  
14 to him. Because he was on his morning walk and he  
15 ran into him and then said that's who we were going  
16 to talk to.**

17 **Q.** I'm going to hand you -- well, you  
18 testified under cross-examination that you agreed  
19 that on the evening of October 8 -- or perhaps it  
20 was the early morning hours of October 9. But at  
21 the interview at the hospital you didn't  
22 specifically use the word "unconscious" referring  
23 to past sweat lodges. Do you recall that line of  
24 questioning on your cross-examination?

25 **A. You confused me.**

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1 Q. I'm sorry. You were confronted by Ms. Do  
2 with why you didn't use the word "unconscious" when  
3 you were interviewed the first time with  
4 Detective Edgerton. Do you recall that?

5 A. Yes.

6 MS. DO: I object. That misstates both the  
7 question and the testimony, Your Honor.

8 THE COURT: I'm sorry, Ms. Do?

9 MS. DO: I'm sorry. I object. I believe that  
10 both misstates the question I asked and the  
11 testimony.

12 THE COURT: Okay. What's your recollection of  
13 your question?

14 MS. DO: My question to Mrs. Mercer was is it  
15 true that on October 8, 2009, when you spoke to  
16 Detective Pam Edgerton, you never told her that  
17 people inside the sweat lodge were saying folks  
18 were unconscious?

19 I think Ms. Polk just rephrased the  
20 question very differently. And the question I  
21 heard was when Ms. Do asked you about you using the  
22 word "unconscious." To me it has very different  
23 import.

24 THE COURT: Ms. Polk used the word  
25 "confronted" also.

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1 Ms. Polk, was that question close enough?

2 MS. POLK: It's close enough, Your Honor.

3 THE COURT: If you can paraphrase and ask  
4 Miss Mercer that, she can answer that question.

5 Q. BY MS. POLK: Do you recall today whether  
6 during that first interview with Detective Edgerton  
7 you discussed with the detective whether or not  
8 people were unconscious in prior sweat lodges?

9 A. I don't recall. I don't -- she didn't --  
10 I don't. She didn't -- I don't remember her asking  
11 specifically asking about previous sweat lodges. I  
12 remember in our explanation -- you know -- telling  
13 her that about other sweat lodges.

14 Q. And do you recall, as you sit here today,  
15 whether in that first interview you told  
16 Detective Edgerton that Mr. Ray knew that people  
17 were unconscious in the 2009 sweat lodge ceremony?

18 A. You're asking me if I remember if I told  
19 that to the detective? No. I don't remember that.

20 Q. Yes. Do you recall whether you told that  
21 to Detective Diskin when he interviewed you on  
22 October 9?

23 A. If I told him I knew there was people  
24 unconscious in '08?

25 Q. No. I'm sorry. Do you recall when

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1 Detective Diskin interviewed you on October 9,  
2 recall whether you told him that in the sweat lodge  
3 ceremony in 2009 that people were unconscious and  
4 that Mr. Ray knew that?

5 A. I think I told them that -- yeah. The  
6 next day. Yeah. Yes.

7 Q. And what do you recall telling  
8 Detective Diskin the very next day?

9 A. I remember saying that James -- that  
10 people had told James that someone was unconscious  
11 or that two people were unconscious and that James  
12 said to wait until the next round.

13 Q. You were asked some questions about in  
14 2007 and 2008 whether this was normal for a sweat  
15 lodge. And your response was it was perhaps normal  
16 for a James Ray sweat lodge ceremony. Do you  
17 recall that?

18 A. Yes. I read it in the transcript.

19 Q. Was it normal -- was the medical distress  
20 or the physical distress seen by participants in  
21 2007, 2008 and 2009 normal for the other sweat  
22 lodge ceremonies that you had assisted that were  
23 not conducted by James Ray?

24 A. I would say other than the guy being hurt  
25 and the guy saying he's having a heart attack. But

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1 I guess I wasn't thinking about those at the time.

2 Q. And then you were asked questions about  
3 why you didn't call 911 in 2007 and 2008. And let  
4 me ask you this: In 2009 you did call 911; is that  
5 correct?

6 A. Yes.

7 Q. Did you ask permission from somebody  
8 first?

9 A. No. I asked James Ray for a phone.

10 Q. And why --

11 A. I told Amayra to call, and she walked the  
12 other way.

13 Q. And can you explain why in 2009 you felt  
14 you could call 911 and in 2008 and 2007 you did  
15 not?

16 A. In 2009 people were blue. I don't  
17 need -- it was obvious that medical attention was  
18 needed.

19 Q. Okay. And then finally I just want to  
20 show you a couple of exhibits. I'm going to put up  
21 on the overhead Exhibit 73, which has already been  
22 admitted. I'm going to put up Exhibit 74, which  
23 has already been admitted.

24 Do you see this lady curled up?

25 A. Yes.

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1 Q. Do you have any recollection today of  
2 what her condition was?

3 A. **She was very, very bad. I don't know if**  
4 **that's the one that was in -- she was in bad shape.**  
5 **I don't think she was coherent. I can't remember**  
6 **exactly. I remember her, though. I'm really bad**  
7 **with faces and people. So I couldn't tell you if**  
8 **that was someone in particular or not.**

9 Q. And, Miss Mercer, will you tell the Court  
10 why you -- why the photographs are taken about a  
11 half hour later instead of immediately?

12 A. **Because usually I was tending to getting**  
13 **people towels or water or still -- you know --**  
14 **doing things with the sweat lodge. After the lodge**  
15 **James Ray in the past had had people take what was**  
16 **left of their medicine bags and throw them into the**  
17 **fire. And I was always concerned with people in**  
18 **that state getting near the fire. So I would**  
19 **either be around the fire or be helping people**  
20 **until it was obvious it was time that people were**  
21 **getting their things together and getting settled**  
22 **and going on their separate ways.**

23 Q. So by the time you took photographs, you  
24 had already rendered the assistance you could to  
25 the participants?

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1 A. **I would -- I mean, we still obviously**  
2 **helped them get to their rooms and helped them if**  
3 **they needed further assistance. But I think -- I**  
4 **mean, I know the pictures were taken a time later.**  
5 **I'm not saying after I took the pictures I walked**  
6 **away and didn't do anything. I went back and**  
7 **continued to work.**

8 Q. Okay.

9 A. **I just stopped for a moment to take**  
10 **pictures for my friend.**

11 Q. I understand. I'm going to put on the  
12 overhead Exhibit 76 and ask you if you recall this  
13 group that's in the background. And there is a man  
14 with a hat bent over.

15 A. **I can't see very well. But, again, I'm**  
16 **really bad with people and faces. I can't make**  
17 **that out.**

18 Q. You see where I just made a mark?

19 A. **Yes.**

20 Q. Do you recall what was going on over in  
21 that corner?

22 A. **No.**

23 Q. Let me put up on the overhead Exhibit 55.  
24 Would you agree with me that that appears to be the  
25 same man that was in the previous exhibit?

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1 A. **I couldn't be certain. I can't tell.**

2 Q. Let me approach you and let you look at  
3 the live photos. I'm going to hand you the two  
4 exhibits I just referred to.

5 A. **Oh, yeah. Yes. Yes.**

6 Q. And then I'm going to put Exhibit 49 back  
7 up on the overhead and ask you to explain to the  
8 Court what you just recognized.

9 A. **I recognize the fellow in this photo to**  
10 **be the same fellow in the previous photo.**

11 Q. And do you have any recollection today  
12 what he was doing with the feet of somebody there?

13 A. **No. No, I don't.**

14 MS. POLK: Thank you, Miss Mercer.

15 Thank you, Judge.

16 THE COURT: Thank you, Counsel.

17 Miss Mercer, I have a question. It's  
18 really more in terms of clarification. When I ask  
19 a question, the lawyers can object to that. Of  
20 course, they can follow up. I don't know that I  
21 understood an answer to a question that Ms. Polk  
22 asked.

23 THE WITNESS: Okay.

24 THE COURT: So counsel can listen. If I  
25 happen to have missed the question Ms. Polk asked.

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1 She was asking you -- well, you had indicated  
2 before you had seen other sweat lodge ceremonies,  
3 others that did not involve Mr. Ray. Is that true?

4 THE WITNESS: Yes.

5 THE COURT: You said that. I think Ms. Polk  
6 was asking you to compare what you observed, what  
7 you testified to, about seeing physical distress  
8 and what you might or might not have seen after  
9 other sweat lodge ceremonies that did not involve  
10 Mr. Ray. What was your answer to that question?

11 Did you see a difference with regard --

12 THE WITNESS: There was never anyone injured  
13 in any other sweat lodge, traditional sweat lodge,  
14 other than James Ray's sweat lodge. To my  
15 knowledge, there has never been an injury or people  
16 coming out in distress, looking the way they did  
17 from James Ray's lodge.

18 THE COURT: I was really trying to restate a  
19 question that Ms. Polk asked. I'm going to ask for  
20 the lawyers to follow up if they wish.

21 Ms. Polk?

22 MS. POLK: No, Your Honor.

23 THE COURT: Ms. Do?

24 MS. DO: No, Your Honor. Thank you.

25 THE COURT: Thank you.

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1 May Miss Mercer be excused?  
 2 MS. POLK: Yes, Your Honor.  
 3 THE COURT: Counsel, we'll go ahead and recess  
 4 at this time and resume at 1:30. And I'll ask  
 5 Ms. Polk or anybody to advise people regarding the  
 6 rule of exclusion, ask the attorneys to make sure  
 7 everyone understands that.  
 8 (Recess.)  
 9 THE COURT: Back on the record in State versus  
 10 James Arthur Ray. He has waived his appearance at  
 11 this hearing. The attorneys are all present.  
 12 Ms. Polk, you may continue.  
 13 MS. POLK: Thank you, Your Honor. The state  
 14 calls Vicky Rock, please.  
 15 THE COURT: Ma'am, please step to the front of  
 16 the courtroom here. And if you'd raise you're  
 17 right hand and be sworn by the clerk here to my  
 18 left.  
 19 VICTORIA ROCK,  
 20 having been first duly sworn upon her oath to tell  
 21 the truth, the whole truth, and nothing but the  
 22 truth, testified as follows:  
 23 THE COURT: Please be seated here at the  
 24 witness stand. Please start, ma'am, by stating and  
 25 spelling your full name.

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1 THE WITNESS: My name is Victoria Rock;  
 2 V-i-c-t-o-r-i-a, R-o-c-k.  
 3 THE COURT: Thank you.  
 4 Ms. Polk?  
 5 DIRECT EXAMINATION  
 6 BY MS. POLK:  
 7 Q. Good afternoon, Miss Rock. In 2008 were  
 8 you residing in the Verde Valley area?  
 9 A. **No, ma'am.**  
 10 Q. Where were you residing?  
 11 A. **Shanai, Illinois.**  
 12 Q. Are you now residing in the Verde Valley  
 13 area?  
 14 A. **I am.**  
 15 Q. When did you come back?  
 16 A. **August of this year.**  
 17 Q. And in 2008 did you participate in a  
 18 seminar put on by James Ray called the "Spiritual  
 19 Warrior Seminar"?  
 20 A. **Yes, I did.**  
 21 Q. Do you recall the approximate dates of  
 22 that seminar?  
 23 A. **September 13th to the 18th? Was a Sunday**  
 24 **through -- we left on Friday morning.**  
 25 Q. Had you participated previously in other

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1 James Ray events?  
 2 A. **One event.**  
 3 Q. And what event was that?  
 4 A. **Harmonic Wealth.**  
 5 Q. Do you recall approximately when that  
 6 was?  
 7 A. **The year before.**  
 8 Q. In September 13, the week of September 13  
 9 of 2008, then, where was the event held that you  
 10 participated in?  
 11 A. **The Spiritual Warrior?**  
 12 Q. Yes.  
 13 A. **In Angel Valley in Sedona.**  
 14 Q. Was that your first time at the Angel  
 15 Valley center?  
 16 A. **Yes, ma'am.**  
 17 Q. Did you participate in all of the events  
 18 that week that were part of the Spiritual Warrior?  
 19 A. **Yes, I did.**  
 20 Q. Did you participate in something called  
 21 the "Vision Quest"?  
 22 A. **Yes, I did.**  
 23 Q. Can you explain to the Court what the  
 24 Vision Quest was.  
 25 A. **The Vision Quest was we were sent out in**

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1 **the desert alone for 36 hours to journal and just**  
 2 **be in silence.**  
 3 Q. How many days or nights was it?  
 4 A. **It was two nights. We went out late, and**  
 5 **then we came back in a day and a half later in the**  
 6 **morning.**  
 7 Q. During the time, during the 36 hours that  
 8 you were out in the desert, did you have any food  
 9 or water?  
 10 A. **No, ma'am.**  
 11 MR. KELLY: Your Honor?  
 12 THE COURT: Yes, Mr. Kelly.  
 13 MR. KELLY: Judge, I object on the basis of  
 14 relevance. I'm curious as to how this relates to  
 15 any prior specific act which the state is urging  
 16 admissibility under 404(b) that this lady  
 17 participated in other activities. Up to this point  
 18 in this hearing we've been discussing the sweat  
 19 lodge and the activities within the sweat lodge.  
 20 And secondly, Judge, I appreciate your  
 21 focus this morning in regards to the 2005 event.  
 22 And I'd ask the prosecutor to focus as to what the  
 23 specific act is that's proposed its-- admissibility  
 24 is proposed in 2008. Is it the entire event? Is  
 25 it the lady coming out the door who passed out?

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1 THE COURT: Ms. Polk, first with regard to the  
2 objection, there have been some questions about the  
3 Vision Quest. There has been some testimony about  
4 that. But, again, in the 404(b) context pretty  
5 confined area, the relevance. I would like you to  
6 address that.

7 MS. POLK: Judge, you're correct. There has  
8 been some testimony about the Vision Quest, and in  
9 2005 the order of events and the amount of time  
10 between the Vision Quest and the sweat lodge. And  
11 its relevance is simply that before, as on other  
12 occasions in 2009, as on previous occasions, before  
13 these participants go into the sweat lodge, they  
14 have participated in a Vision Quest that was 36  
15 hours out in the desert without food or water.

16 Again, it's the similarities between the  
17 prior events and the 2009 event.

18 THE COURT: And then as to -- as opposed to a  
19 particular person in 2005, the other part that  
20 counsel is inquiring about is the specific act that  
21 you would be discussing with this witness that  
22 would relate to the 2009 sweat lodge event. I  
23 think you stated before. You're talking about the  
24 whole manner in which it was conducted.

25 MS. POLK: Yes. And, Judge, with respect to  
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1 the prior sweat lodges as well, we are moving to  
2 admit testimony about the entire sweat lodge  
3 ceremony as well as the sequence of events leading  
4 up to those sweat lodge ceremonies.

5 In discussing specific things that  
6 happened during the sweat lodge ceremony, I'm  
7 drawing out the remarkable similarity between the  
8 2005, the '07, the '08 sweat lodge ceremonies to  
9 what happens in 2009.

10 But what is relevant under 404(b) is  
11 everything about the 2005 and subsequent sweat  
12 lodges as well as the fact that there is the Vision  
13 Quest that precedes the sweat lodge that is part of  
14 the explanation for why participants become in such  
15 physical distress because they've been deprived  
16 food and water the 36 hours preceding the sweat  
17 lodge.

18 THE COURT: Mr. Kelly?

19 MR. KELLY: Judge, would we not have to hear  
20 from each and every participant, 2005 through 2008  
21 in order for this court to make a decision whether  
22 there is clear and convincing evidence that somehow  
23 one of the exceptions to 404(b) has been  
24 established?

25 That's my concern, that we have now taken  
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1 this event -- and you have seen evidence such as  
2 the exhibits in the 70 range that show numerous  
3 participants who are happy and excited. And one is  
4 even dancing in the background.

5 And what we've done is taken one witness  
6 who said she didn't have any water during the  
7 Vision Quest. Judge, I believe I've had a chance  
8 to articulate my objection. I'm sure I'll discuss  
9 it further.

10 THE COURT: I pointed to the various cases,  
11 and the attorneys have cited them. The state's  
12 ability to show similarity and circumstances is  
13 significant.

14 Mr. Kelly?

15 MR. KELLY: In that regard, Mr. Li just  
16 reminded me of something extremely important. And  
17 that is one of the victims in the indicted case --  
18 Liz Neuman -- did not participate in the Vision  
19 Quest.

20 THE COURT: Then -- thank you. Those various  
21 details could be significant. With regard to this  
22 witness and the testimony right now, again, the  
23 similarity is a relevant factor. And I'm going to  
24 allow the testimony. And I have -- well,  
25 Mr. Kelly, I believe you may have further argument  
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1 at some point about burden of proof. But that can  
2 be addressed in argument. Or if you have testimony  
3 on behalf of the defendant.

4 MR. KELLY: Judge, I feel compelled to put  
5 this on the record. The significant disadvantage  
6 for this defense team is that we're not able to  
7 prepare for this hearing because we do not know the  
8 specific act alleged. It's simply, as Ms. Polk  
9 just articulated, everything from 2005 to 2008.

10 Obviously, as you have explained this  
11 morning, that cannot be possible under 404(b).  
12 This is not a five-year continuing crime. And so  
13 it's difficult to know prior to this woman's  
14 testimony that I was suppose to prepare some  
15 testimony or -- excuse me -- cross-examination  
16 relating to Vision Quest.

17 I'm not alone in that disability. Each  
18 of the attorneys for each witness has been  
19 confronted with the same problem. The lack under  
20 Rule 15 of the identification of the specific act  
21 and the specific exception to that act to allow us  
22 to prepare for this hearing.

23 THE COURT: I'm going to allow this testimony.

24 Ms. Polk, is there anything else you  
25 wanted to address?

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1 MS. POLK: No. Just, Judge, that I did file  
 2 in August a memorandum detailing the events that we  
 3 would be going into at this hearing.  
 4 THE COURT: I was just retrieving that. I did  
 5 look these documents over last night. And there is  
 6 some description in the response that was filed.  
 7 It's in early August.  
 8 MS. POLK: Yes.  
 9 THE COURT: I'm going to overrule the  
 10 objection at this time.  
 11 You may continue, Ms. Polk.  
 12 MS. POLK: Thank you, Judge.  
 13 Q. Miss Rock, you mentioned that on the  
 14 Vision Quest the participants had no food or water?  
 15 A. Correct.  
 16 Q. Approximately what time of day did that  
 17 Vision Quest end in 2008?  
 18 A. It end?  
 19 Q. Yes. The Vision Quest portion.  
 20 A. In the morning like -- it was early. I'd  
 21 say somewhere around 7:00.  
 22 Q. And how did it end? How did you know it  
 23 was over?  
 24 A. The Dream Team came and got us from the  
 25 spots that we were at.

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1 Q. You used the term "Dream Team" will you  
 2 explain to the Court what that is.  
 3 A. The Dream Team is people who volunteer  
 4 their time to help out at James Ray's events to  
 5 assist him in things that need to get done.  
 6 Q. After the Dream Team retrieved you from  
 7 your spot, what happened next as part of the  
 8 seminar?  
 9 A. We were then told to go to breakfast. At  
 10 that time we were still in silence. And shower or  
 11 get ready for the day. And then we met back in the  
 12 Crystal Hall, which was a meeting room.  
 13 Q. When did you get some food or water?  
 14 A. When we came in from the Vision Quest,  
 15 around 7:00 in the morning.  
 16 Q. Okay. Did you partake of food and water  
 17 and then go shower, if you recall?  
 18 A. I don't recall.  
 19 Q. After getting some food and water and  
 20 showering, then you assembled in the Crystal Hall?  
 21 A. Correct.  
 22 Q. What happened in the Crystal Hall?  
 23 A. We had a meeting, and silence was then  
 24 lifted. We were able to talk about our experience  
 25 on our Vision Quest. James holds an open frame

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1 where we could ask questions or that type of thing.  
 2 Then shortly thereafter it was time for lunch. We  
 3 were told to eat lightly and to hydrate, that he  
 4 had a big surprise.  
 5 Q. After you ate lunch where did you go?  
 6 A. Back to the Crystal Hall, I believe.  
 7 Q. And what happened then at the Crystal  
 8 Hall?  
 9 A. Well, then we were told about the next  
 10 event, which was going to be the sweat lodge.  
 11 Q. Did you not know prior to being told  
 12 about the big surprise that you were going to have  
 13 a sweat lodge?  
 14 A. I did not. I did not.  
 15 Q. And how did you prepare for the sweat  
 16 lodge?  
 17 A. We were told to change our clothing into  
 18 something that could get wet and dirty. A lot of  
 19 people wore bathing suits or whatever.  
 20 Q. So you came back to the Crystal Hall.  
 21 You were told about the sweat lodge at that time?  
 22 A. Right.  
 23 Q. And then were you told to go change  
 24 again?  
 25 A. We were told to go change and meet down

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1 by the sweat lodge.  
 2 Q. At some point did James Ray tell about  
 3 what to expect in the sweat lodge?  
 4 A. That it was going to be hot.  
 5 Q. Let me ask you first. When was it he  
 6 told you what to expect?  
 7 A. Prior to telling us to go change our  
 8 clothes and prepare for it.  
 9 Q. So you're still in the Crystal Hall?  
 10 A. Uh-huh.  
 11 Q. And he announces the big surprise, which  
 12 is a sweat lodge?  
 13 A. The sweat lodge.  
 14 Q. And then what did he say?  
 15 A. That it was going to be very hot, that  
 16 you would think that you're going to die but you  
 17 won't. He bragged about how the Indian comes down  
 18 to see the crazy white man do his sweat lodge.  
 19 Q. What did he mean by that? Or did he  
 20 explain what he meant by that?  
 21 MR. KELLY: Your Honor, as the question is  
 22 rephrased -- withdraw.  
 23 THE WITNESS: Pardon me?  
 24 Q. BY MS. POLK: Did Mr. Ray explain what he  
 25 meant by saying that the crazy white man and his

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1 sweat lodge?

2 **A. Yeah. That they've never seen anyone do**  
3 **it so hot.**

4 **Q.** Do you recall anything else Mr. Ray said  
5 to you at that time about what to expect from the  
6 sweat lodge?

7 **A. What I do recall is to seek out Sheryl.**  
8 **Sheryl Stern was a James Ray employee. If we**  
9 **needed to get out, she would get us out safely.**

10 **Q.** Is there any discussion about pushing  
11 limits?

12 **A. Well, that we were more than that. And**  
13 **that's what I refer to is that you will feel like**  
14 **you want to die but you won't. We were more than**  
15 **that.**

16 **Q.** About how long would you say the meeting  
17 was with Mr. Ray where he told you what to expect  
18 in the sweat lodge?

19 **A. I don't recall as far as -- you know --**  
20 **how long that meeting was.**

21 **Q.** The comments you have just shared with  
22 the Court -- does that about cover what you were  
23 told before going in the sweat lodge?

24 **A. Yes.**

25 **Q.** You told us you then gathered down at the  
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1 sweat lodge site itself?

2 **A. Uh-huh.**

3 **Q.** And what happened down there?

4 **A. We burnt our journals that we had been**  
5 **working on all week. It was a lot of writing**  
6 **exercises. And part of that was, like, letting go**  
7 **of the old is what that signified. So we burnt**  
8 **those. And then we lined up to go into the sweat**  
9 **lodge.**

10 **Q.** Were you given instructions about how to  
11 enter or exit the sweat lodge?

12 **A. We were to enter clockwise. I was in the**  
13 **second row in. So the first row went around. And**  
14 **then the second row went in. And I was in the --**  
15 **closest to the fire pit, if you will, the second**  
16 **row in.**

17 **Q.** Were you given any instructions about how  
18 long the sweat lodge would last?

19 **A. No, ma'am.**

20 **Q.** Were you told anything about what to do  
21 if you wanted to get out?

22 **A. Well, seek out Sheryl Stern. And you**  
23 **could only get out when the gates or the door was**  
24 **open.**

25 **Q.** Who was Sheryl Stern?

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1 **A. An employee of James Ray.**

2 **Q.** And was she inside the sweat lodge with  
3 you?

4 **A. Yes, she was.**

5 **Q.** Do you recall approximately what time it  
6 was then, that, you entered the sweat lodge in  
7 2008?

8 **A. Mid afternoon. I don't really know.**  
9 **Somewhere around maybe 2:00 o'clock.**

10 **Q.** How did you feel, Mrs. Rock, after  
11 hearing that you were going into a sweat lodge and  
12 the comments that Mr. Ray made about what to  
13 expect?

14 **A. Nervous.**

15 **Q.** And how come?

16 **A. I don't deal well with heat personally.**  
17 **So I had a little anxiety about that and being in a**  
18 **dark and close space.**

19 **Q.** But you did, in fact, go on in the sweat  
20 lodge?

21 **A. I did.**

22 **Q.** And just describe for the Court generally  
23 how the ceremony began and what happened once you  
24 were inside the sweat lodge.

25 **A. Once we were all seated in the sweat**  
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1 **lodge, the grandfathers were brought in. The**  
2 **grandfathers are the hot stones on a pitchfork**  
3 **thrown into the pit. The door was closed, and the**  
4 **water was thrown, then, on the hot rocks.**  
5 **Therefore, it was an instant sauna, steam, hot.**

6 **Q.** And what happened next?

7 **A. There was some chanting. And James**  
8 **explained about the different directions, what the**  
9 **south meant and the north meant and the east and**  
10 **the west. There was some chanting and -- that's**  
11 **what I remember.**

12 **Q.** About how long did that first round last?

13 **A. I believe, like, 20 minutes.**

14 **Q.** Did you stay in for the 20 minutes?

15 **A. No, ma'am. I got out.**

16 **Q.** When was it that you got out?

17 **A. After the first round.**

18 **Q.** How did you get out?

19 **A. Sheryl Stern was about three or four**  
20 **people to my left. And I got her attention when**  
21 **the gate went up, and I crawled out.**

22 **Q.** And why did you leave?

23 **A. Because the heat was so intense, my head**  
24 **was pounding and, for lack of a better description,**  
25 **my heart was pounding out my rear end as I sat**

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1 **there on the sand.**  
 2 **Q.** How did you get out? Did you walk?  
 3 **A.** **I crawled. Because it's rather low. I**  
 4 **kind of -- you know -- squatted down and kind of**  
 5 **crawled out.**  
 6 **Q.** What did you do once you got outside?  
 7 **A.** **I went and got some water and laid**  
 8 **underneath the tent. There was a tent, makeshift.**  
 9 **Q.** When you got outside, did anybody tend to  
 10 you?  
 11 **A.** **There was a few Dream Team members out**  
 12 **there that did offer me assistance.**  
 13 **Q.** Did you feel bad about leaving after the  
 14 first round?  
 15 **A.** **No.**  
 16 **Q.** And did you ever go back in?  
 17 **A.** **No.**  
 18 **Q.** What did you do after the first round,  
 19 then? Once the second round started, were you  
 20 still --  
 21 **A.** **I still sat outside.**  
 22 **Q.** And what did you do?  
 23 **A.** **I just laid on a towel and by that tent.**  
 24 **Because my head was pounding. I had taken my**  
 25 **contacts out prior to going into the sweat lodge.**

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1 **And so my vision was off and my head was pounding.**  
 2 **So I laid with my eyes closed on the towel**  
 3 **underneath the tent to keep the sun out of my face.**  
 4 **Q.** Did you stay at the site of the sweat  
 5 lodge for the entire sweat lodge ceremony?  
 6 **A.** **I did.**  
 7 **Q.** Were you there when the sweat lodge  
 8 ceremony ended?  
 9 **A.** **Yes, I was.**  
 10 **Q.** After you exited after round one, did you  
 11 become aware of other people coming out at any  
 12 point?  
 13 **A.** **If I understand you correctly, after**  
 14 **round one did anyone beside myself come out?**  
 15 **Q.** Yes.  
 16 **A.** **No.**  
 17 **Q.** How about after round -- subsequent  
 18 rounds -- rounds two, three, et cetera?  
 19 **A.** **I believe one person came out on two. On**  
 20 **round three I believe Sheryl Stern herself came out**  
 21 **and a few other people.**  
 22 **Q.** And what was happening to people as they  
 23 came out, as you recall?  
 24 **A.** **They were just hot, disoriented.**  
 25 **Q.** How would they be taken care of by the

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1 Dream Team.  
 2 **A.** **They would offer them water, give them**  
 3 **towels, sit there and talk to them.**  
 4 **Q.** At some point did you become aware of a  
 5 man yelling about his girlfriend?  
 6 **A.** **Yes.**  
 7 **Q.** When was that, if you recall?  
 8 **A.** **That was around round five or six.**  
 9 **Q.** Do you recall the name today of the man  
 10 you're thinking of right now?  
 11 **A.** **John.**  
 12 **Q.** Describe for the Court what he was doing  
 13 or what his condition was.  
 14 **A.** **He was obviously in an altered state,**  
 15 **screaming that you're going to die. Get out of**  
 16 **there. Get out of there. You're going to die.**  
 17 **And he was physically trying to get to the sweat**  
 18 **lodge gate to go in there. He was held back by**  
 19 **Dream Team members.**  
 20 **Q.** So prior to that did you notice when he  
 21 came out of the sweat lodge? When did you first  
 22 become aware of him?  
 23 **A.** **When he started screaming. Yeah.**  
 24 **Q.** And then what happened when he was  
 25 screaming and trying to get back into the sweat

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1 lodge?  
 2 **A.** **The Dream Team people sat there and held**  
 3 **him back and tried to talk to him. That she was**  
 4 **okay. She was okay.**  
 5 **Q.** Did you also become aware at some point  
 6 of someone named Irwin?  
 7 **A.** **Irwin Basma.**  
 8 **Q.** Irwin Basma. And is that a male or  
 9 female?  
 10 **A.** **Male.**  
 11 **Q.** What drew your attention to Irwin Basma?  
 12 **A.** **He was, like, convulsing, shaking**  
 13 **violently like that. He was in distress. And**  
 14 **again the Dream Team people were over there taking**  
 15 **care of him.**  
 16 **Q.** Do you recall what round it was that you  
 17 became aware of Irwin Basma?  
 18 **A.** **I believe Irwin was prior to John. Maybe**  
 19 **fourth or fifth round.**  
 20 **Q.** Any other specific individuals that you  
 21 can recall to today, becoming aware that they were  
 22 in some form of distress?  
 23 **A.** **Barb Waters, who was my roommate. They**  
 24 **had to physically drag her out at the end. And**  
 25 **this was a while later that she came back to the**

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1 residence on a golf cart with two Dream Team  
2 members, who then asked me to take care of Barb  
3 because they had the closing ceremony.

4 Q. Okay. Let me back you up a little bit.

5 A woman named Barbara Waters was your roommate?

6 A. She was in the house that I was staying  
7 in. Right. Yes.

8 Q. And she also went into the sweat lodge  
9 ceremony?

10 A. Yes.

11 Q. Were you aware of Barbara Walters --  
12 Barbara Walters while you were outside the sweat  
13 lodge after you had existed? When did you first  
14 become aware that Barbara Waters was in distress?

15 A. When she was physically dragged out of  
16 the sweat lodge.

17 Q. And when was that?

18 A. At the end after -- I believe it was  
19 seven rounds.

20 Q. So let's talk about the end of the sweat  
21 lodge ceremony. You were there?

22 A. Yes.

23 Q. Do you recall who came out of the sweat  
24 lodge first?

25 A. I don't.

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1 Q. Do you recall that --

2 A. Well, at the end James Ray came out  
3 first.

4 Q. And do you recall, then, who followed him  
5 out?

6 A. I don't remember exactly.

7 Q. Do you recall about how many people came  
8 out after him?

9 A. A lot.

10 Q. And how would you describe the general  
11 scene at that point?

12 A. Chaotic, people in all different sorts of  
13 altered states laying everywhere.

14 Q. When did you become aware that your  
15 roommate, Barbara Waters, was being dragged out of  
16 the sweat lodge?

17 A. I guess standing there and just  
18 witnessing her come out.

19 Q. Do you recall who dragged her out?

20 A. I don't.

21 Q. And then once she was brought out of the  
22 sweat lodge, where was she taken?

23 A. She just was laying there on the ground.

24 Q. Describe for the Court her condition, as  
25 you recall it.

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1 A. Like, as if she was sleeping. She was  
2 passed out.

3 Q. Were her eyes open or closed?

4 A. Closed.

5 Q. Do you recall what Barbara Waters was  
6 wearing that day?

7 A. I know she was wearing a two-piece  
8 bathing suit. It was bright in color. But exactly  
9 what color I don't recall.

10 Q. Have you had contact with Barbara Waters  
11 since 2008?

12 A. I did see her at an another event after  
13 that.

14 Q. And I'm going to put up on this overhead  
15 what's been marked as Exhibit 67.

16 A. Okay.

17 Q. And ask you if you are able to identify  
18 Barbara Waters in that photograph.

19 A. The lady laying on the ground.

20 Q. In what color bathing suit?

21 A. I guess it's red.

22 Q. And you can actually point to your screen  
23 and draw a mark where you see her.

24 A. Right here.

25 Q. How long was Barbara Waters laying on the  
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1 ground?

2 A. That I don't know because I didn't stay  
3 there the whole time until she came back to the  
4 room.

5 Q. What did you do?

6 A. I went back to the room.

7 Q. Was there -- at some point are

8 participants released to go back to your rooms when  
9 the sweat lodge ceremony is over?

10 A. You could leave at any time. After you  
11 come out and it's over to go get cleaned up for  
12 dinner. Yeah.

13 Q. You left after the first round, yet you  
14 stayed on the site until the entire ceremony was  
15 over?

16 A. Yes.

17 Q. Why was that?

18 A. Well, my husband was still in there.

19 Q. Who is your husband?

20 A. Mark Rock.

21 Q. He was inside the sweat lodge?

22 A. Yes, ma'am.

23 Q. Do you recall seeing Barbara Waters  
24 laying there on the ground, though, before you left  
25 the scene?

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- 1 **A. Yes.**  
 2 **Q.** Do you know today as you testify here in  
 3 court where James Ray was at the time that Barbara  
 4 Waters was laying there on the ground?  
 5 **A. My recollection, shortly after the sweat**  
 6 **lodge ended, everyone came out. James Ray had some**  
 7 **water and put his T-shirt back on and got in his**  
 8 **golf cart and left.**  
 9 **Q.** Do you recall if Barbara Waters was out  
 10 of the sweat lodge when James Ray left?  
 11 **A. I'm not sure.**  
 12 **Q.** She could have been out of the sweat  
 13 lodge or she could still have been in?  
 14 **A. True.**  
 15 **Q.** You don't know either way?  
 16 **A. I don't know.**  
 17 **Q.** You said you left then and went back to  
 18 your room?  
 19 **A. Uh-huh.**  
 20 **Q.** And what was that for? Why did you go  
 21 back to your room?  
 22 **A. To get cleaned up, shower for dinner.**  
 23 **Q.** And did you do that?  
 24 **A. I did.**  
 25 **Q.** And did you go to dinner?  
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- 1 **A. I did not.**  
 2 **Q.** Why not?  
 3 **A. Because I didn't feel well.**  
 4 **Q.** And then what did you choose to do then?  
 5 **A. I put my contacts back in my eyes. I**  
 6 **took an Imitrex, which is a prescription medication**  
 7 **for migraine headaches, and laid down.**  
 8 **Q.** How long did you lay down for?  
 9 **A. Half hour maybe.**  
 10 **Q.** And then what happened?  
 11 **A. Then there was all kinds of chaos outside**  
 12 **the window, which was Barbara coming on the golf**  
 13 **cart.**  
 14 **Q.** How did you first become aware that  
 15 Barbara was coming on the golf cart?  
 16 **A. I peeked out the window.**  
 17 **Q.** And where was Barbara brought to?  
 18 **A. The Orange House.**  
 19 **Q.** Was she brought back to your room?  
 20 **A. Yes -- well, to her room.**  
 21 **Q.** And did you somehow then become further  
 22 involved with the Barbara Waters situation?  
 23 **A. I was asked by Penny, who is a Dream Team**  
 24 **volunteer, if I would take care of Barbara because**  
 25 **she had to go for the closing ceremony.**

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- 1 **Q.** Did you observe as Barbara was moved from  
 2 the golf cart to her bed?  
 3 **A. She was, like, weak, very unstable. They**  
 4 **walked her into her room. She got in bed in that**  
 5 **outfit, the bathing suit.**  
 6 **Q.** Did you agree to look after her?  
 7 **A. I did.**  
 8 **Q.** And what did that involve?  
 9 **A. That involved me constantly making -- not**  
 10 **making but trying to get her to drink water and**  
 11 **waking her up.**  
 12 **Q.** Did someone give you instructions on what  
 13 to do?  
 14 **A. I believe Penny. That's what Penny told**  
 15 **me to do. Just keep a close eye on her and try to**  
 16 **get her to drink water.**  
 17 **Q.** And did you do that?  
 18 **A. And I did.**  
 19 **Q.** For how long?  
 20 **A. Seemed like all night.**  
 21 **Q.** How frequently did you try to get her to  
 22 drink water?  
 23 **A. Probably every 20 minutes.**  
 24 **Q.** Did Barbara Waters' condition improve?  
 25 **A. It did.**  
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- 1 **Q.** And when did it improve?  
 2 **A. Probably somewhere around 4:00 o'clock in**  
 3 **the morning. She felt she wanted to get in the**  
 4 **shower.**  
 5 **Q.** Did that end your involvement with her?  
 6 **A. Pardon me?**  
 7 **Q.** Did that end your involvement with  
 8 Barbara Waters?  
 9 **A. Yes.**  
 10 **Q.** What did you do from there?  
 11 **A. Then I went to sleep.**  
 12 **Q.** How soon after that did you depart from  
 13 the Angel Valley Center?  
 14 **A. That Friday morning.**  
 15 **Q.** The same morning? The morning after the  
 16 sweat lodge?  
 17 **A. Yes, ma'am.**  
 18 **Q.** Going back to the scene outside of the  
 19 sweat lodge in 2008, how many people would you  
 20 estimate were having some form of distress as a  
 21 result of having been inside the sweat lodge  
 22 ceremony with James Ray?  
 23 **A. 10 or more.**  
 24 **Q.** And is that a rough estimate?  
 25 **A. Yes.**

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1 Q. Did other participants attempt to help  
2 those participants who were in distress?  
3 A. **Yeah. Everyone helped each other.**  
4 **Uh-huh.**  
5 Q. Were they -- did you ever observe -- did  
6 you ever hear anyone -- did you ever hear a Dream  
7 Team member instruct participants to leave others  
8 alone?  
9 A. **Yes.**  
10 Q. What did you hear?  
11 A. **That it's not our place to intrude on**  
12 **their experience.**  
13 Q. And, Miss Rock, that was the end of your  
14 involvement in James Ray events; is that true?  
15 A. **I did do another event after the**  
16 **Spiritual Warrior. That was in April or May. It**  
17 **was called "Modern Magic" in Dana Point,**  
18 **California.**  
19 Q. Was that the end of your involvement in  
20 any further sweat lodges with James Ray?  
21 A. **Yes, ma'am.**  
22 Q. Thank you.  
23 Thank you, Judge?  
24 THE COURT: Thank you, Ms. Polk.  
25 Mr. Kelly?  
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1 CROSS-EXAMINATION  
2 BY MR. KELLY:  
3 Q. Miss Rock, you paid money to go to the  
4 Spiritual Warrior; correct?  
5 A. **Yes, sir.**  
6 Q. And after this experience, then you paid  
7 money a second time to go to the Modern Magic in  
8 California; correct?  
9 A. **Yes, sir.**  
10 Q. And when you wrote that check to pay  
11 money to attend these events, you wrote it to an  
12 entity known as James Ray International; correct?  
13 A. **JRI. Yes, sir.**  
14 Q. And I looked at these photographs. We're  
15 looking at Exhibit No. 67 on the monitor. Is this  
16 a Dream Team member in the blue shirt in exhibit --  
17 A. **The one with the hat on?**  
18 Q. Yes.  
19 A. **Yeah. That's Penny.**  
20 Q. And she's wearing a blue shirt; correct?  
21 A. **Uh-huh.**  
22 Q. Yes?  
23 A. **Yes, sir.**  
24 Q. And it says "Dream Team"; correct?  
25 A. **Yes.**  
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1 Q. Can you read what it says under the  
2 "Dream Team"?  
3 A. **I can't.**  
4 MR. KELLY: I'm sorry. Sorry. I apologize.  
5 Judge, may I approach the witness?  
6 THE COURT: Yes.  
7 Q. BY MR. KELLY: Miss Rock, I'm handing you  
8 what has been admitted as Exhibit 64. In  
9 Exhibit 64 there is two individuals, one of whom  
10 has a Dream Team international -- excuse me. A  
11 Dream Team T-shirt on; correct?  
12 A. **Yes.**  
13 Q. And that's a closer photograph. Can you  
14 see where it says underneath the words "Dream Team,  
15 James Ray International"?  
16 A. **I can't see that clearly. No.**  
17 Q. You don't have any reason to dispute  
18 that's what it says; correct?  
19 A. **I don't.**  
20 Q. And, in fact, after this event in 2008,  
21 your husband, Mark Rock, became a member of the  
22 Dream Team; correct?  
23 A. **Yes, sir.**  
24 Q. And the reason I ask you that question is  
25 this: You would agree with me that Sheryl Stern  
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1 was either a volunteer or an employee of James Ray  
2 International; correct?  
3 A. **Correct.**  
4 Q. And my questions are focused now during  
5 the event in 2008 at Angel Valley. Okay?  
6 A. **Sure.**  
7 Q. And she was assigned certain  
8 responsibilities to help the folks participating in  
9 this particular event; correct?  
10 A. **Correct.**  
11 Q. And when you communicated with Dream Team  
12 members to ask them questions, they would direct  
13 you to various activities; correct?  
14 A. **Correct.**  
15 Q. So, as an example, when you went on your  
16 Vision Quest, your contact was with one or more  
17 Dream Team members; correct?  
18 A. **Yes.**  
19 Q. And if I understand you correctly, the  
20 only time you had contact with Mr. Ray himself was  
21 during these public presentations. Fair statement?  
22 A. **Fair.**  
23 Q. So let's use this as an example: During  
24 the Vision Quest Mr. Ray did not come out to the  
25 Vision Quest to visit with you; correct?  
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- 1 **A. Correct.**  
 2 **Q.** He didn't instruct you as to where to go  
 3 set up your Vision Quest; correct?  
 4 **A. Correct.**  
 5 **Q.** And he didn't see you after you completed  
 6 your Vision Quest?  
 7 **A. Correct.**  
 8 **Q.** You knew from these various James Ray  
 9 International Dream Team members how to  
 10 sequentially go through the activities during 2008;  
 11 correct?  
 12 **A. Correct.**  
 13 **Q.** And these folks that are the --  
 14 Judge, I'll publish Exhibit 49 just for  
 15 the benefit of counsel and the Court. Sometimes it  
 16 helps when you blow things up -- you can see the  
 17 word "International." Prior to the word  
 18 "International," it says "James Ray" and gives the  
 19 internet address, www.jamesray.com. Some kind of  
 20 corporate entity; correct?  
 21 **A. Yes.**  
 22 **Q.** Now, during these activities you had paid  
 23 money and you were free to participate in any or  
 24 all of the activities offered during that weekend  
 25 in 2008; correct?

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- 1 **A. Correct.**  
 2 **Q.** So, as an example, if you said hey, I  
 3 don't want to eat lunch, you wouldn't have to eat  
 4 lunch; correct?  
 5 **A. Correct.**  
 6 **Q.** If you said I don't want to participate  
 7 in the Vision Quest, you would not have to go  
 8 participate in the Vision Quest; correct?  
 9 **A. Correct.**  
 10 **Q.** And also if you did not want to  
 11 participate in the sweat lodge, you would not have  
 12 to participate in the sweat lodge; correct?  
 13 **A. Correct.**  
 14 **Q.** And, in fact, in viewing the evidence in  
 15 this case that's been admitted for this hearing and  
 16 listening to some testimony that you didn't get to  
 17 hear, I believe -- or it's my understanding that  
 18 many people did not participate in the sweat lodge  
 19 when it began; correct?  
 20 **MS. POLK:** Objection to the  
 21 mischaracterization.  
 22 **MR. KELLY:** I'm going to rephrase my question.  
 23 **Q.** When the sweat lodge began in 2008, there  
 24 were Dream Team members outside; correct?  
 25 **A. Correct.**

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- 1 **Q.** They didn't participate in the sweat  
 2 lodge; correct?  
 3 **A. Correct.**  
 4 **Q.** There were Dream Team members inside;  
 5 correct?  
 6 **A. Yes.**  
 7 **Q.** One of whom was Sheryl Stern; right?  
 8 **A. Was an employee, not a Dream Team.**  
 9 **Q.** Okay. Thank you for that clarification.  
 10 So she's an employee versus a Dream Team. What is  
 11 your understanding as to the difference?  
 12 **A. In my person opinion, a Dream Team is a**  
 13 **volunteer. So, therefore, they don't know exactly**  
 14 **everything there is to know. I believe that Sheryl**  
 15 **Stern being an employee --**  
 16 **Q.** She should know more?  
 17 **A. She should know more.**  
 18 **Q.** Know more about what?  
 19 **A. About what's going on.**  
 20 **Q.** Okay. So you would agree --  
 21 **A. About what's going to happen next or**  
 22 **whatever. She had more experience is what I'm**  
 23 **trying to say.**  
 24 **Q.** Okay. So she would know through the  
 25 public presentations to when lunch was served, when

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- 1 the Vision Quest was going to happen, to the sweat  
 2 lodge, where those events were a surprise to a new  
 3 person like yourself; correct?  
 4 **A. Correct.**  
 5 **Q.** And she might have more knowledge in that  
 6 regard than a volunteer such as this Dream Team  
 7 member; correct?  
 8 **A. Correct.**  
 9 **Q.** These folks, these Dream Team members,  
 10 were nice people; correct?  
 11 **A. Sure, they are.**  
 12 **Q.** Helpful; correct?  
 13 **A. Yes.**  
 14 **Q.** And you and the Dream Team were  
 15 participating in this spiritual event back in 2008;  
 16 correct?  
 17 **A. Correct.**  
 18 **Q.** Let me ask you some background questions  
 19 about -- you're married to Mark Rock?  
 20 **A. I am.**  
 21 **Q.** You and Mark live here in Yavapai County  
 22 correct? Now?  
 23 **A. Yes, sir.**  
 24 **Q.** You're from Illinois?  
 25 **A. Yes.**

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- 1 Q. What did you do for a living then?
- 2 A. **I was in sales with new construction.**
- 3 Q. And your husband -- was he in
- 4 construction?
- 5 A. **He was also in the same business as**
- 6 **myself.**
- 7 Q. How many years did you and he engage in
- 8 that business?
- 9 A. **Over 10.**
- 10 Q. And was this a retirement move to Yavapai
- 11 County?
- 12 A. **Yeah.**
- 13 Q. Did you go to college?
- 14 A. **No.**
- 15 Q. Did you take any type of specialized
- 16 training as it relates to medicine?
- 17 A. **No.**
- 18 Q. Physiology?
- 19 A. **No.**
- 20 Q. Biology?
- 21 A. **No.**
- 22 Q. Chemistry?
- 23 A. **No.**
- 24 Q. Are you a registered nurse?
- 25 A. **No.**

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- 1 Q. Medical doctor?
- 2 A. **No.**
- 3 Q. EMT?
- 4 A. **No.**
- 5 Q. How about a first-aid class? Did you
- 6 ever take any of those?
- 7 A. **I did several years ago.**
- 8 Q. Did you get a certification from Red
- 9 Cross?
- 10 A. **Yes.**
- 11 Q. CPR? Was that included?
- 12 A. **Yes.**
- 13 Q. Were you aware in 2008 that there was a
- 14 medical doctor who was an actual participant of
- 15 this event?
- 16 A. **No, sir.**
- 17 Q. I have a transcript, and we have marked
- 18 it as an exhibit for purposes of identification as
- 19 Exhibit 126 in this proceeding. And it's dated
- 20 September 21, 2010. And it memorializes a
- 21 conversation between you and Deputy Diskin. Do you
- 22 recall that conversation?
- 23 A. **I recall him -- a conversation with the**
- 24 **detective. Yes.**
- 25 Q. Was that conversation in person or over

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- 1 the telephone?
- 2 A. **In person.**
- 3 Q. Where did it take place?
- 4 A. **It took place at Angel Valley.**
- 5 Q. During -- and the purpose was, my
- 6 understanding, was for Detective Diskin to
- 7 interview you in regards to events which had
- 8 occurred in 2008. Correct?
- 9 A. **Correct.**
- 10 Q. How did it come about? How did you find
- 11 out that the detective wanted to interview you?
- 12 A. **I don't recall, honestly.**
- 13 Q. Well, it wasn't a coincidental or random
- 14 meeting, I take it? Correct?
- 15 A. **Correct.**
- 16 Q. So how did it come about that you ended
- 17 up as a witness in this case?
- 18 A. **I believe how it all transpired was that**
- 19 **they wanted to speak to Mark, my husband. And then**
- 20 **they became aware that I was there and I had also**
- 21 **participated in James Ray's Spiritual Warrior in**
- 22 **2008.**
- 23 Q. And, in fact, they interviewed your
- 24 husband before they interviewed you; correct?
- 25 A. **I don't recall how.**

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- 1 Q. Do you recall being present during your
- 2 husband's interview?
- 3 A. **Yes, I do.**
- 4 Q. And the interview took place at Angel
- 5 Valley?
- 6 A. **Yes, sir.**
- 7 Q. Do you know why there?
- 8 A. **I don't know the reason why. No.**
- 9 Q. Were you living at that time in the
- 10 Yavapai County area?
- 11 A. **Yes, sir.**
- 12 Q. And they didn't ask to come to your
- 13 house; correct?
- 14 A. **I'm living at Angel Valley.**
- 15 Q. Listen to my question. It's real simple.
- 16 Did they not ask you -- or did they not ask you to
- 17 conduct the interview at your home; correct?
- 18 A. **You didn't hear me.**
- 19 Q. I didn't?
- 20 A. **I'm living at Angel Valley.**
- 21 Q. Okay. And how long have you lived at
- 22 Angel Valley?
- 23 A. **Since, I believe, August 21st, 2010.**
- 24 Q. And are you employed there?
- 25 A. **No, I'm not.**

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- 1 Q. Is your husband?
- 2 A. **No.**
- 3 Q. Do you pay rent?
- 4 A. **We're volunteers.**
- 5 Q. And what do you volunteer for?
- 6 A. **We volunteer. We do work there. I'm**
- 7 **right now the guest coordinator. I help them with**
- 8 **making arrangements for people who want to come**
- 9 **visit Angel Valley.**
- 10 Q. And the purpose of these visits to Angel
- 11 Valley relate to spirituality; correct?
- 12 A. **Correct.**
- 13 Q. And you said during your direct testimony
- 14 that you provided an opinion that I would like to
- 15 ask you about. You said some folks came out of the
- 16 sweat lodge in an altered state. I'd ask you to
- 17 explain to Judge Darrow what you mean by "altered
- 18 state."
- 19 A. **By an "altered state" I mean**
- 20 **hallucinating. John who was screaming for his**
- 21 **girlfriend to get out of there was in an altered**
- 22 **state. He was not in his right mind, if you will.**
- 23 Q. Is that what you mean by an altered
- 24 state? Hallucinations?
- 25 A. **Hallucinating. Just -- yeah. Not aware**
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- 1 **of the reality as people who had not participated**
- 2 **in this, the sweat lodge, were aware of.**
- 3 Q. Now, I want to clarify, Miss Rock. You
- 4 were not in John's mind; correct?
- 5 A. **No. I wasn't.**
- 6 Q. So you're making an assumption that he
- 7 was hallucinating?
- 8 A. **I am.**
- 9 Q. We covered this with you. Have no
- 10 medical backgrounds whatsoever?
- 11 A. **I don't. You're right.**
- 12 Q. Perhaps you would agree with me that if
- 13 John were here, he could provide a more accurate
- 14 depiction?
- 15 A. **Absolutely.**
- 16 Q. As to his experience; correct?
- 17 A. **Absolutely.**
- 18 Q. What your testimony is based on is mere
- 19 perceptions that you observed; correct?
- 20 A. **Absolutely.**
- 21 MR. KELLY: Judge, I apologize. This
- 22 exhibit --
- 23 THE COURT: Mr. Li?
- 24 MR. LI: If I may help?
- 25 THE COURT: Sure.
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- 1 Q. **BY MR. KELLY:** When John comes out of the
- 2 sweat lodge in 2008, it's your opinion he's in an
- 3 altered state as you described that term means to
- 4 you; correct?
- 5 A. **Correct.**
- 6 Q. And at that time when John was in his
- 7 altered state at this spiritual retreat, you didn't
- 8 think it was necessary to call 911; correct?
- 9 A. **No. No.**
- 10 Q. You didn't believe it was necessary to
- 11 give John a ride to the hospital; correct?
- 12 A. **No.**
- 13 Q. You didn't believe that it was necessary
- 14 to call an ambulance to come retrieve John to take
- 15 him to the hospital; correct?
- 16 A. **Correct.**
- 17 Q. What you were observing was the
- 18 manifestation of the event itself in terms of its
- 19 spirituality; correct?
- 20 A. **If you could rephrase that.**
- 21 Q. John never went to the hospital; correct?
- 22 A. **Correct.**
- 23 Q. No one had to provide any type of medical
- 24 treatment or aid to John; correct?
- 25 A. **Correct.**
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- 1 Q. And, in fact, these Dream Team members
- 2 surround him and assist him; correct?
- 3 A. **Correct.**
- 4 Q. And what they do is they talk to him in
- 5 this excited state that he's in and they calm him
- 6 down; correct?
- 7 A. **Correct.**
- 8 Q. That's what you told Detective Diskin
- 9 about a month ago; correct?
- 10 A. **Correct.**
- 11 Q. After the Dream Team speaks with John
- 12 when he's trying to get in there to get his
- 13 girlfriend, he settles down and he's very calm;
- 14 true?
- 15 A. **He did calm down.**
- 16 Q. Right. And no one renders any additional
- 17 aid; correct?
- 18 A. **Correct.**
- 19 MS. DO: Your Honor, may I approach as well?
- 20 THE COURT: Yes.
- 21 MR. KELLY: May I approach the witness?
- 22 THE COURT: Yes, you may.
- 23 Q. **BY MR. KELLY:** Miss Rock, I'm going to
- 24 show you what's been admitted as Exhibit 75 and ask
- 25 you is that a picture of John in the middle of the
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- 1 photograph?
- 2 **A. This here?**
- 3 **Q. Yes.**
- 4 **A. That's John. But that's John Kapowski.**
- 5 **I'm talking about a different John. That's not the**
- 6 **John I'm speaking of.**
- 7 **Q. So who is the John that you're speaking**
- 8 **of?**
- 9 **A. I don't know his last name.**
- 10 **Q. Show the Judge John Kapowski.**
- 11 **A. Right here.**
- 12 **Q. That's not the John you were talking**
- 13 **about?**
- 14 **A. That is not the John I'm speaking of.**
- 15 **Q. But you don't know this John's last name?**
- 16 **A. I don't. All I know is that he was the**
- 17 **boyfriends of Michelle, who was a James Ray**
- 18 **employee.**
- 19 **Q. You told us that before the sweat lodge**
- 20 **began, you completed the Vision Quest. You were**
- 21 **provided lunch. You were told to eat a light**
- 22 **lunch; correct?**
- 23 **A. Correct.**
- 24 **Q. You were told to hydrate, hydrate,**
- 25 **hydrate?**

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- 1 **A. Correct.**
- 2 **Q. And that encouragement or suggestion was**
- 3 **provided to you repeatedly to hydrate, hydrate,**
- 4 **hydrate; correct?**
- 5 **A. Yes.**
- 6 **Q. And there was plenty of water to hydrate**
- 7 **with; correct?**
- 8 **A. Yes.**
- 9 **Q. In addition to that, before going into**
- 10 **the sweat lodge you were told that it was going to**
- 11 **be very hot; correct?**
- 12 **A. Yes, sir.**
- 13 **Q. So this wasn't a surprise where all of a**
- 14 **sudden the temperature changed from ice cold to**
- 15 **very hot. You were told before you went in this is**
- 16 **going to be a hot deal; correct?**
- 17 **A. Yes.**
- 18 **Q. And you knew that you didn't handle heat**
- 19 **well; correct?**
- 20 **A. Yes.**
- 21 **Q. And so as a result of that, you became**
- 22 **very anxious; correct?**
- 23 **A. Yes.**
- 24 **Q. You told Ms. Polk that you were suffering**
- 25 **some anxiety?**

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- 1 **A. I was nervous.**
- 2 **Q. And you went in anyway. And your purpose**
- 3 **in going in there was to experience the**
- 4 **spirituality of Angel Valley on that weekend;**
- 5 **correct?**
- 6 **A. It wasn't the experience of Angel Valley.**
- 7 **Q. Well, I don't want to parse words with**
- 8 **you. But my point is, ma'am, if you don't handle**
- 9 **the heat well and if you're anxious and you're told**
- 10 **that this is going to be extremely hot, then you**
- 11 **fight those feelings and tendencies not to go in,**
- 12 **and you go in and experience this; correct?**
- 13 **A. Correct.**
- 14 **Q. And the reason you're doing that, I**
- 15 **suppose, some spiritual reason; correct?**
- 16 **A. Well, for a spiritual reason and to not**
- 17 **have any regrets that I didn't go in there and play**
- 18 **full on.**
- 19 **Q. And we talked about this a moment ago.**
- 20 **You were free not to go in; correct?**
- 21 **A. Absolutely.**
- 22 **Q. And everyone else there was free not to**
- 23 **go in; correct?**
- 24 **A. Correct.**
- 25 **Q. Including John, the John with no last**

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- 1 **name; correct?**
- 2 **A. Correct.**
- 3 **Q. And when this meeting took place prior to**
- 4 **the sweat lodge and Mr. Ray was describing the**
- 5 **temperature in the sweat lodge, you believed that**
- 6 **that was sensationalist; correct?**
- 7 **A. Yes, I did.**
- 8 **Q. In other words -- and I've heard or read**
- 9 **other people call it a tongue in cheek about dying.**
- 10 **Nobody was serious about that; correct?**
- 11 **A. Well, it does seem to be the whole topic**
- 12 **the whole week of Spiritual Warrior.**
- 13 **Q. I would assume --**
- 14 **MS. POLK: If the witness can be allowed to**
- 15 **finish her answer, I'd appreciate it.**
- 16 **THE COURT: Ma'am, did you finish your answer?**
- 17 **THE WITNESS: I was done.**
- 18 **Q. BY MR. KELLY: If we're going to discuss**
- 19 **spirituality, necessarily we're going to discuss**
- 20 **death; true?**
- 21 **A. True.**
- 22 **Q. And when this meeting took place prior to**
- 23 **the sweat lodge in 2008, you believed that those**
- 24 **statements were sensationalized; correct?**
- 25 **A. I did believe that.**

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1 Q. And you mentioned a term, playing full  
2 on; correct?  
3 A. Yes, sir.  
4 Q. And that was giving your maximum  
5 emotional, mental, physical effort to receive as  
6 much benefit from this weekend as possible;  
7 correct?  
8 A. Yes.  
9 Q. And people varied in regards to how much  
10 they could play full on; correct?  
11 A. Correct.  
12 Q. You went into the sweat lodge. You sat  
13 down. You saw Sheryl Stern in the sweat lodge with  
14 you; correct?  
15 A. Yes.  
16 Q. You knew Sheryl Stern was an employee of  
17 JRI?  
18 A. Yes.  
19 Q. Which is the acronym for James Ray  
20 International; correct?  
21 A. Yes.  
22 Q. You knew she was the go-to person if you  
23 were in trouble; correct?  
24 A. Yes.  
25 Q. You made it through a round and you left;  
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1 correct?  
2 A. Yes.  
3 Q. You left on your own free will?  
4 A. Yes.  
5 Q. And when you left, you told  
6 Detective Diskin that you were proud of making it  
7 through that first round; correct?  
8 A. Yes.  
9 Q. And what you meant by that was that you  
10 had played full on to the best of your ability, and  
11 then exercising free will you left the sweat lodge  
12 and you had received the benefit that you had paid  
13 for. Fair statement?  
14 A. Fair.  
15 Q. Now, Mr. Ray would present these group  
16 meetings and encourage people to play full on,  
17 exceed their physical and mental limits; correct?  
18 A. Yes.  
19 Q. It's kind of the focus of his seminars;  
20 right?  
21 A. Yes.  
22 Q. And the goal of that is to make you a  
23 better person; correct?  
24 A. Yes.  
25 Q. Now, at no time did Mr. Ray prevent you  
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1 from leaving the sweat lodge; correct?  
2 A. Correct.  
3 Q. At no time did Mr. Ray prevent anyone  
4 from leaving that sweat lodge; correct?  
5 A. Correct.  
6 Q. Then after you leave the sweat lodge --  
7 we have some various photographs of -- that were  
8 taken by several people of the events after the  
9 sweat lodge. I don't know if you've had a chance  
10 to see them. Have you?  
11 A. I don't believe I have.  
12 Q. Take a look at --  
13 If I may I approach?  
14 THE COURT: Yes.  
15 Q. BY MR. KELLY: Exhibit 45 in evidence.  
16 Do you recognize anyone in those photographs?  
17 A. No.  
18 Q. What I'm going to do, with the Court's  
19 permission, is hand you a stack of photographs, all  
20 of which have been admitted into evidence, and ask  
21 you if you can identify yourself, your husband,  
22 Barbara Waters or John with no name.  
23 MS. POLK: Counsel, could I have exhibit  
24 numbers for which you've handed the witness.  
25 MR. KELLY: I've handed her a stack. I don't  
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1 know the numbers. If she identifies them, we'll --  
2 THE COURT: They're all the 2008 obviously?  
3 MR. KELLY: They're from 2008, and they've all  
4 been admitted.  
5 THE COURT: Did you give her all the  
6 photographs or --  
7 MR. KELLY: No. But I can.  
8 THE COURT: Here's a list if that helps.  
9 Q. BY MR. KELLY: Did you get through them?  
10 A. The only picture that I found was the one  
11 of Barbara Waters. There is no picture of John,  
12 myself or Mark in any of these.  
13 Q. And the picture that you're referring to  
14 is Exhibit 29, for the record, this photograph?  
15 A. Correct.  
16 Q. So now I've published Exhibit 29 on the  
17 monitor. Do you know that person sitting next to  
18 Barbara?  
19 A. That's Chandra, C-h-a-n-d-r-a.  
20 Q. She's smiling; correct?  
21 A. Yes, she is.  
22 Q. And if we take a look at Exhibit 67,  
23 what's been in evidence, there is your friend  
24 Barbara; correct?  
25 A. Correct.  
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1 Q. And, again, several people around her  
 2 this time; correct?  
 3 A. **Correct.**  
 4 Q. Now, they're all adults; correct?  
 5 A. **Yes, sir.**  
 6 Q. And I don't see anyone with a cell phone  
 7 like they're trying to call 911. Do you?  
 8 A. **No.**  
 9 Q. I don't see anyone trying to carry her  
 10 out of there in this photograph; correct?  
 11 A. **Correct.**  
 12 Q. I don't see James Ray. Do you?  
 13 A. **No, I don't.**  
 14 Q. You kind of raised your eyebrows. It  
 15 bothers you that James Ray wasn't there; correct?  
 16 A. **I wouldn't say it necessarily bothers me.**  
 17 **No.**  
 18 Q. Well, I believe you said in direct that  
 19 after the conclusion of the sweat lodge Mr. Ray  
 20 drank a few cups of water and went up to his room.  
 21 Correct?  
 22 A. **Correct.**  
 23 Q. And I think you used the word to  
 24 Detective Diskin that he was more physically able  
 25 to withstand the effects of the sweat lodge than

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1 other people. Seemed like he was in pretty good  
 2 shape; correct?  
 3 A. **Sure.**  
 4 Q. And so he took a couple glasses of water  
 5 and he went to his room; correct?  
 6 A. **Sure.**  
 7 Q. And you told us that when the sweat lodge  
 8 is over, all the participants could get a couple  
 9 drinks of water and go to their room; correct?  
 10 A. **Absolutely.**  
 11 Q. And, to your knowledge, ma'am, none of  
 12 these one two, three, four, five people surrounding  
 13 Barbara Waters hopped a golf cart, went up to  
 14 Mr. Ray's room and told him about Barbara; correct?  
 15 A. **As far as I understand, no.**  
 16 Q. We know you didn't go do it?  
 17 A. **I didn't do it.**  
 18 Q. In fact, you took care of her all night.  
 19 You gave her water to help her hydrate throughout  
 20 the evening because the Dream Team member asked you  
 21 to do that; correct?  
 22 A. **Yes, sir.**  
 23 Q. Didn't call 911; correct?  
 24 A. **Correct.**  
 25 Q. You and your husband traveled there in a

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1 vehicle, I assume?  
 2 A. **We flew and rented a car.**  
 3 Q. And you didn't get in that rental car and  
 4 take her to the hospital?  
 5 A. **Correct.**  
 6 Q. You didn't go to Mr. Ray's room and tell  
 7 him what the problem was; correct?  
 8 A. **Correct.**  
 9 Q. And Barbara Waters today is also a  
 10 resident at Angel Valley; correct? Am I wrong  
 11 about that? Do you still see her?  
 12 A. **Barb Waters?**  
 13 Q. Yes.  
 14 A. **I haven't seen her since Dana Point,**  
 15 **California, Modern Magic.**  
 16 Q. You saw Barbara at the next function.  
 17 What did you call it in California?  
 18 A. **Modern Magic.**  
 19 Q. She attended that?  
 20 A. **Yes.**  
 21 Q. So again she paid money to JRI to attend  
 22 an event after the 2008 sweat lodge; correct?  
 23 A. **Well, she was part of his World Wealth**  
 24 **Society. So however that worked out, yes.**  
 25 Q. And, in fact, it's my understanding that

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1 she was actually a Dream Team member for the next  
 2 year event with your husband?  
 3 A. **Yes.**  
 4 Q. And what we're talking about is the 2009  
 5 Spiritual Warrior event in October of 2009;  
 6 correct?  
 7 A. **Correct.**  
 8 Q. Between October of 2009 until September  
 9 of 2010, September 21, 2010 -- and that's the date  
 10 that Detective Diskin interviewed you. So between  
 11 the 2009 incident and September 21, 2010 --  
 12 A. **Okay.**  
 13 Q. -- who did you talk to about what  
 14 happened at Angel Valley?  
 15 A. **Who, meaning my mother? My sisters?**  
 16 Q. Yeah. Let me try to break it down. Did  
 17 you speak to your husband about the events that  
 18 happened in 2009?  
 19 A. **Absolutely.**  
 20 Q. Did you and he discuss the events that  
 21 happened in 2008?  
 22 A. **Sure.**  
 23 Q. I'm talking about the 11-month time frame  
 24 between October of 2009 and September of 2010.  
 25 Okay?

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1 **A. Okay.**  
 2 **Q.** Did you and your husband do any  
 3 independent research about the 2008 or 2009 event?  
 4 **A. No.**  
 5 **Q.** Did you read Sheryl Stern's statement?  
 6 **A. Yes.**  
 7 **Q.** That's my example. In addition to Sheryl  
 8 Stern's statement, what other statements, if any,  
 9 did you read?  
 10 **A. I did review a copy of Julia -- her last**  
 11 **name escapes me. Her 2008 Spiritual Warrior notes,**  
 12 **which were available to anyone who attended in**  
 13 **2008.**  
 14 **Q.** Anything else?  
 15 **A. No. As far as -- no.**  
 16 **Q.** Have you gone on line and checked out  
 17 what's been posted on line as an example?  
 18 **A. Sure.**  
 19 **Q.** And I'm talking about --  
 20 **A. I also read Connie Joy's book.**  
 21 **Q.** What book is that?  
 22 **A. The Tragedy in Sedona.**  
 23 **Q.** So you read The Tragedy in Sedona, which  
 24 was published after 2009. You've accessed internet  
 25 sites which provide not factual descriptions but  
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1 opinions and conclusion about what happened. You  
 2 read Sheryl Stern's interview conducted by the  
 3 Yavapai County police agencies, and you spoke to  
 4 your husband?  
 5 **A. Correct.**  
 6 **Q.** What else?  
 7 **A. Nothing else comes to mind.**  
 8 **Q.** Did you talk to the Hamiltons?  
 9 **A. Michael and Amayra. Sure.**  
 10 **Q.** Were you aware that the Hamiltons have  
 11 been sued by people who were injured during the  
 12 2009 event?  
 13 **A. I am aware of that.**  
 14 **Q.** That there is a pending lawsuit?  
 15 **A. I'm aware of that.**  
 16 **Q.** Are you aware, then, that the Hamiltons  
 17 turned around and sued JRI and James Ray?  
 18 **A. I am aware of that.**  
 19 **Q.** Have you been disclosed as a witness in  
 20 that case?  
 21 **A. No, sir.**  
 22 **Q.** Anybody interviewed you with regard to  
 23 those cases?  
 24 **A. No, sir.**  
 25 **Q.** You told Ms. Polk that 10-plus people  
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1 were in distress after the sweat lodge experience  
 2 in 2008; correct?  
 3 **A. Correct.**  
 4 **Q.** Do you recall telling Detective Diskin  
 5 that there were 20 to 25 people?  
 6 **A. I don't recall that.**  
 7 **Q.** How many --  
 8 **A. I said 10 or more.**  
 9 **Q.** Let me hand you, to refresh your  
 10 recollection, Exhibit 126. I'm going to ask you to  
 11 refer to page 10, line 6. Mr. Diskin -- excuse me.  
 12 Detective Diskin asked you the question how many  
 13 people would you estimate in 2008 had some type of  
 14 medical problem or issues during or after the sweat  
 15 lodge? And I mean vomiting, hallucinating or not  
 16 coherent. Would you please read your answer to  
 17 Judge Darrow?  
 18 **A. I responded with, I guess, that there was**  
 19 **over 60 of us. If I recall correctly. Maybe 20 to**  
 20 **25 people had some kind of adverse effect, if**  
 21 **that's what you mean.**  
 22 **Q.** Now, here's my -- thank you, ma'am.  
 23 Today under oath at the witness stand you tell  
 24 Judge Darrow 10 people or more. You tell  
 25 Detective Diskin 20 to 25 people about a month ago.  
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1 My question is are you having a problem remembering  
 2 how many people?  
 3 **A. I'm not having a problem. I'd like to**  
 4 **clarify that for you.**  
 5 **Q.** Okay.  
 6 **A. 10 people that were in similar condition**  
 7 **to Barbara, like passed out. There was all kinds**  
 8 **of people laying on the ground that weren't able to**  
 9 **walk out of there at their own free will at that**  
 10 **particular moment.**  
 11 **Q.** Okay. Now you've got to help us. All  
 12 kinds of people. Is that 3 or 25?  
 13 **A. That would be in the 20 range.**  
 14 **Q.** So we have 20 people who were not able to  
 15 walk out of the area around the sweat lodge on  
 16 their own power. That's your testimony?  
 17 **A. Yeah. I believe so. I mean, this is**  
 18 **right after the sweat lodge; correct?**  
 19 **Q.** That's the question.  
 20 **A. Right.**  
 21 **Q.** So this is Exhibit 38. Here's two folks  
 22 on the ground, Exhibit 41.  
 23 **MS. POLK:** Your Honor, objection to using  
 24 photographs that were taken 30 minutes or more  
 25 after the ceremony to cross-examine a witness who  
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1 did not take the photographs, does not know when  
2 the photographs were taken.

3 THE COURT: We haven't had a question yet.  
4 Okay. Yes. If there is going to be a reference,  
5 it needs to have a time frame, Mr. Kelly.

6 Q. BY MR. KELLY: Do you see the two  
7 individuals in Exhibit 41?

8 A. **Yes, I do.**

9 Q. Were those two of the people that had to  
10 receive assistance in walking away from the sweat  
11 lodge?

12 A. **That I don't know.**

13 Q. Well, tell us what you do know in terms  
14 of clarity as to the specific numbers and the  
15 individuals who required assistance to get out of  
16 this thing in 2008. And, ma'am, if you would like  
17 to --

18 A. **The only person --**

19 Q. Let me finish my question.

20 A. **-- I know for sure that needed  
21 assistance was Barb Waters.**

22 Q. Okay. Thank you. Because that's  
23 consistent with the photographs that you looked  
24 through. She's the lady on the ground; correct?

25 A. **Correct.**

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1 Q. So the only person that needed assistance  
2 was Barb Waters. And we've discussed her. She's  
3 the one that you helped in the room, Dream Team  
4 member, et cetera; correct?

5 You mentioned that when you entered the  
6 sweat lodge for the first round, there was  
7 chanting; correct?

8 A. **After the gate was closed?**

9 Q. Yes, ma'am.

10 A. **And the ceremony began. Yes.**

11 Q. Who is chanting?

12 A. **James Ray.**

13 Q. What are the participants saying or  
14 doing?

15 A. **They repeat what -- he chants. And  
16 everyone starts together and then it's all  
17 consistent, uniform chanting.**

18 Q. Does it gets pretty loud?

19 A. **Not too loud.**

20 Q. Let me put up -- if you need to look at  
21 this closer, please let me know. Let me put up  
22 Exhibit 64. Do you know a fellow by the name of  
23 Ted Mercer?

24 A. **I was introduced to Ted yesterday  
25 afternoon sitting on the bench.**

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1 Q. Do you recall Mr. Mercer's -- after you  
2 leave the sweat lodge after the first round,  
3 several more rounds occur; correct?

4 A. **Correct.**

5 Q. And you're in proximity to the sweat  
6 lodge; correct?

7 A. **Yes, sir.**

8 Q. And do you recall seeing Mr. Mercer  
9 tending the fire?

10 A. **I can't remember if that was him.**

11 Q. No.

12 A. **No.**

13 Q. I don't want to confuse you. Do you  
14 recall somebody tending the fire?

15 A. **Absolutely. Yes.**

16 Q. Do you recall that person to be the same  
17 person you met in the hallway?

18 A. **That I -- no.**

19 Q. Do you recall a lady by the front door,  
20 someone referred to, I believe, as the gate keeper?

21 A. **The gate keeper?**

22 Q. Do you know that person?

23 A. **No.**

24 Q. Have you seen her in the courthouse today  
25 or yesterday?

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1 A. **No.**

2 Q. Miss Rock, when was it that you read  
3 Sheryl Stern's statement?

4 A. **I don't recall.**

5 Q. Can you --

6 A. **I could guesstimate for you.**

7 Q. Please.

8 A. **Sometime around the end of August of  
9 2010.**

10 Q. And I saw you and your husband sitting on  
11 the bench this morning when other folks were  
12 testifying. And Mark had a big stack of papers  
13 with a highlighter.

14 A. **Uh-huh.**

15 Q. Were any of those papers related to this  
16 case?

17 A. **If the "this case" refers to testimony  
18 for 2008 sweat lodge, yes.**

19 Q. So he had -- what I saw when I walked by  
20 is he had a highlighter, had quite a few papers.  
21 Were they various witness statements?

22 A. **No. Those would actually be the notes  
23 from Julia from 2008 Spiritual Warrior.**

24 Q. Okay. And explain that to me in more  
25 detail, the notes.

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- 1 **A. Julia takes notes.**  
 2 **Q.** And please provide Julia's last name.  
 3 **A. I believe it starts with a "B." Julia.**  
 4 **And her husband is Ralph. Ralph was Mark's**  
 5 **roommate in 2008.**  
 6 **Q.** And Julia takes notes throughout the  
 7 weekend?  
 8 **A. Throughout the whole event.**  
 9 **Q.** And your husband was reviewing those  
 10 notes in preparation for his testimony?  
 11 **A. He was looking at those notes this**  
 12 **morning. Yes, sir.**  
 13 **Q.** Did you look at any of them?  
 14 **A. I did not.**  
 15 **Q.** Was your husband reviewing any other  
 16 information other than Julia's notes?  
 17 **A. No.**  
 18 **Q.** Between September 21, when you met with  
 19 Detective Diskin at Angel Valley and -- did I hear  
 20 you say you live there free? Angel Valley?  
 21 **A. Yes.**  
 22 **Q.** Between September 1, 2010, through today,  
 23 have you met with any other person from the state  
 24 of Arizona, whether it be a prosecutor or a police  
 25 officer?

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- 1 **A. No.**  
 2 MR. KELLY: Thank you, ma'am.  
 3 Thank you, Judge.  
 4 THE COURT: Thank you, Counsel.  
 5 MR. KELLY: Excuse me. May I reopen? Can I  
 6 ask one final question?  
 7 THE COURT: Go ahead, Mr. Kelly.  
 8 **Q.** BY MR. KELLY: You told us that  
 9 Detective Diskin came to Angel Valley to conduct  
 10 the interview with your husband; correct?  
 11 **A. Yes.**  
 12 **Q.** And it was only during that interview,  
 13 then, that Detective Diskin discovered you were at  
 14 the 2008 event; correct?  
 15 **A. I believe so.**  
 16 **Q.** And, again, was that interview set up at  
 17 the Hamilton's request? Do you know?  
 18 **A. I don't honestly know.**  
 19 **Q.** Well, let me put it this way: When did  
 20 you move to Angel Valley from Illinois?  
 21 **A. Mid August.**  
 22 **Q.** So between August of 2010 until  
 23 September 21, 2010, you nor your husband called  
 24 Detective Diskin to let them know where you were  
 25 at; correct?

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- 1 **A. I know I didn't.**  
 2 **Q.** Okay. You don't have any knowledge that  
 3 your husband did?  
 4 **A. I don't know that.**  
 5 **Q.** We'll ask him.  
 6 **A. Yeah. I don't know that.**  
 7 **Q.** I guess my real question is were the  
 8 Hamiltons encouraging you to meet with the  
 9 government?  
 10 **A. I wouldn't say they were encouraging us**  
 11 **to meet with anybody. No.**  
 12 **Q.** What would you say, then?  
 13 **A. That they weren't involved in that**  
 14 **interview.**  
 15 **Q.** Okay. But again, remember I asked you  
 16 how the interview came about? That was one of my  
 17 first questions.  
 18 **A. Right.**  
 19 **Q.** So I'm asking you did the Hamilton's  
 20 arrange this interview?  
 21 **A. That I don't honestly know. I don't**  
 22 **know.**  
 23 MR. KELLY: Thank you again, Miss Rock.  
 24 THE COURT: Thank you.  
 25 Ms. Polk, I have to recess at 3:10.

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- 1 That's the full hour and a half. Also I've been  
 2 informed there is a time-sensitive initial I have  
 3 to conduct. So go ahead.  
 4 MS. POLK: Thank you, Judge.  
 5 REDIRECT EXAMINATION  
 6 BY MS. POLK:  
 7 **Q.** Miss Rock, I'm going to give you back  
 8 what was marked Exhibit 126, which is the  
 9 transcript of your interview with Detective Diskin  
 10 on September 21st, 2010. You were asked by  
 11 Mr. Kelly to read what was at the end on page 10.  
 12 And that dealt with a number of people who were in  
 13 some kind of adverse effect at the end of the sweat  
 14 lodge ceremony in 2008; correct?  
 15 **A. Correct.**  
 16 **Q.** What is your -- do you stand by the  
 17 answer that you gave Detective Diskin in September  
 18 this year? Or would you like to clarify it?  
 19 **A. I tried to clarify it. That there was**  
 20 **over -- you know-- 20 to 25 people that couldn't**  
 21 **readily walk out of the sweat lodge and walk away,**  
 22 **that were laying on the ground for quite a while.**  
 23 **Q.** And Detective Diskin had asked you -- I'm  
 24 sorry. Go ahead.  
 25 **A. Well, and that there was 10 or so more**

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1 **people that were there even longer than that. So**  
2 **that's what I meant by that.**

3 **Q.** And Detective Diskin had asked you if  
4 people were having problems such as vomiting,  
5 hallucinating and not coherent. Did you see people  
6 with problems including vomiting, hallucinating and  
7 not coherent?

8 **A. The not coherent and the hallucinating.**  
9 **I don't believe I witnessed anyone physically**  
10 **vomit.**

11 **Q.** At the same time that you saw people,  
12 some 20 to 25 people, in various stages of  
13 distress, did you also see people smiling?

14 **A. Yes. There were some people who came out**  
15 **of there with exhilaration.**

16 **Q.** You were asked questions about had you  
17 reviewed a statement by Sheryl Stern, and you  
18 replied that you have?

19 **A. I have.**

20 **Q.** In your opinion, was that statement by  
21 Sheryl Stern accurate?

22 **A. In my opinion, yes.**

23 MR. KELLY: Your Honor?

24 THE COURT: Mr. Kelly?

25 MR. KELLY: I would object. That's pure

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1 speculation.

2 THE COURT: Well, the witness testified she  
3 read the statement and it was accurate. I haven't  
4 seen the statement myself.

5 Ms. Polk?

6 MS. POLK: Your Honor, it was suggested that  
7 this witness has seen statements that somehow  
8 influenced her testimony. I think it's fair  
9 redirect to establish, does she believe the  
10 statements she read are, in fact, accurate.

11 THE COURT: Overruled.

12 **Q.** BY MS. POLK: You already answered the  
13 question?

14 **A. I did. In my opinion, yes.**

15 **Q.** And you also answered a question from  
16 Mr. Kelly about having reviewed notes prepared by  
17 someone named Julia. And her last name begins  
18 with?

19 **A. With a "B".**

20 **Q.** Julia was a participant in 2008?

21 **A. Yes, ma'am.**

22 **Q.** What did you observe about Julia  
23 throughout the Spiritual Warrior Seminar in terms  
24 of her note taking habits?

25 **A. She constantly took notes.**

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1 **Q.** What notes did you see that Julia wrote?

2 **A. The notes from the beginning of the event**  
3 **to the end of the event.**

4 **Q.** How did you come into possession of those  
5 notes to read them?

6 **A. She emailed them to us.**

7 **Q.** And, in your opinion, were the notes  
8 taken by Julia accurate?

9 **A. Very accurate.**

10 **Q.** You made the comment that Barbara Waters  
11 was a member of the World Wealth Society. Will you  
12 tell the Judge what that was.

13 **A. The World Wealth Society, the way I**  
14 **understand it, is a group that pays a lump sum of**  
15 **money to JRI, James Ray International, and is able**  
16 **to participate in any of the events at no cost.**  
17 **Although they paid this initial chunk up front.**

18 **Q.** Do you know how much that initial chunk  
19 up front was?

20 **A. I've heard different numbers from 75,000**  
21 **to 60,000. If you're a couple, it's -- you know --**  
22 **all different.**

23 **Q.** And how much did you pay to participate  
24 in the Spiritual Warrior Seminar in September of  
25 2008?

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1 **A. Over \$9,000.**

2 **Q.** And how much did your husband pay?

3 **A. The same.**

4 **Q.** You were asked about your goal in  
5 attending the seminar and in participating in the  
6 sweat lodge. What was your goal?

7 **A. For the sweat lodge?**

8 **Q.** Yes.

9 **A. Just to go in and experience it, if only**  
10 **for one round. That's what my goal was.**

11 **Q.** You used the term "play full on." Where  
12 did you hear -- who used that term?

13 **A. James Ray.**

14 **Q.** How did he use it?

15 **A. As give it more than 100 percent.**

16 **Q.** You told Mr. Kelly that death was the  
17 whole topic the whole week?

18 **A. Yes.**

19 **Q.** How so?

20 **A. Well, James wore a T-shirt, death to**  
21 **death, the first full day. Was talking about the**  
22 **samurais and that -- you know -- you lived**  
23 **impeccably or honorably or you died. There was**  
24 **people that would have to fall on the ground and**  
25 **stay in that position. We had the graveyard, which**

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1 was part of the samurai game. There was a lot  
2 around death and rebirth, which was part of the  
3 whole sweat lodge, was a rebirth.

4 Q. And who said that?

5 A. James Ray.

6 Q. Can you recall more specifically what he  
7 said about death and rebirth?

8 A. I can't right off the top of my head.

9 No.

10 Q. Mr. Kelly established with you that  
11 you're not a doctor nor do you have medical  
12 training. Why were you asked to look after Barbara  
13 Waters in light of that?

14 MR. KELLY: Your Honor, objection.  
15 Speculating as to why some Dream Team member asked  
16 her.

17 THE COURT: Well, just in terms of what was  
18 expressed, I know it's hearsay. Just as long as I  
19 know the basis for Miss Rock's answer.

20 You may answer that if you can.

21 THE WITNESS: Because I was the only person  
22 there to help Barbara. I mean, because I was  
23 staying there because I wasn't well myself. So  
24 that would be my assumption.

25 Q. BY MS. POLK: Prior to the sweat lodge  
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1 ceremony performed by James Ray in 2008, had you  
2 ever done a sweat lodge before?

3 A. No, ma'am.

4 Q. Did you know what to expect?

5 A. No, ma'am.

6 Q. Did you know if what you were seeing in  
7 terms of people in distress was normal or not?

8 A. No.

9 Q. Who was in charge, in your opinion, at  
10 that sweat lodge ceremony?

11 A. James Ray.

12 Q. And when you were asked questions  
13 about -- by Mr. Kelly about why you didn't call  
14 911, did you feel it was your position?

15 A. No.

16 Q. Did you know whether the circumstances  
17 called for emergency intervention or not?

18 A. No.

19 Q. Did you feel it was your position to make  
20 a decision that Barbara Waters should or should not  
21 go to the hospital?

22 A. No.

23 MS. POLK: Thank you, Mrs. Rock.

24 Thank you, Judge.

25 THE COURT: Thank you.

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1 Counsel, we will recess. But may

2 Miss Rock be excused as a witness?

3 MS. POLK: Yes, Your Honor.

4 MR. KELLY: Yes.

5 THE COURT: Miss Rock, you will be excused as  
6 a witness. I think you've been told that the rule  
7 of exclusion of witnesses has been invoked, meaning  
8 you can't talk about your testimony or this case  
9 with any other witness in this hearing until the  
10 hearing is completed. That might be today or it  
11 may go next week, possibly for some time.

12 So you understand how that rule works?

13 THE WITNESS: I do.

14 THE COURT: Thank you.

15 We will recess until 3:30.

16 (Recess.)

17 THE COURT: The record will that show the  
18 attorneys are present.

19 Ms. Polk?

20 MS. POLK: State calls Mark Rock, please.

21 THE COURT: Sir, if you'd please step to the  
22 front of the courtroom here. And then raise you're  
23 right hand and be sworn by the clerk.

24 MARK ROCK,

25 having been first duly sworn upon his oath to tell  
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1 the truth, the whole truth, and nothing but the  
2 truth, testified as follows:

3 THE COURT: Please be seated here at the  
4 witness stand. Please begin by stating your full  
5 name.

6 THE WITNESS: My name is Mark Rock.

7 THE COURT: Thank you.

8 Ms. Polk?

9 MS. POLK: Thank you.

10 DIRECT EXAMINATION

11 BY MS. POLK:

12 Q. Good afternoon, Mr. Rock.

13 A. Good afternoon.

14 Q. You are married to Vicky Rock?

15 A. That's correct.

16 Q. And how long have you been and Vicky been  
17 married?

18 A. We've been married 26 years.

19 Q. Are you currently living in the Verde  
20 Valley area?

21 A. Yes, I am.

22 Q. Where do you and Vicky live?

23 A. Vicky and I live at Angel Valley Retreat.

24 Q. How long have you been residing there?

25 A. Since around August 21st of 2010.

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- 1 Q. Are you working there?
- 2 A. No.
- 3 Q. Are you volunteering there?
- 4 A. I am volunteering there.
- 5 Q. And Vicky as well?
- 6 A. Yes.
- 7 Q. Prior to coming to Angel Valley Retreat
- 8 Center in August of this year, where were you
- 9 living?
- 10 A. Shanai, Illinois.
- 11 Q. And going back to the year 2008, where
- 12 were you living then?
- 13 A. Shanai, Illinois.
- 14 Q. At some point in your life did you come
- 15 to know of James Ray?
- 16 A. Yes, I did.
- 17 Q. How was that?
- 18 A. It was through the movie The Secret and
- 19 then a free event that he had probably three months
- 20 later.
- 21 Q. Did you attend -- after that free event,
- 22 did you attend a paid event?
- 23 A. Yes, I did.
- 24 Q. What event was that?
- 25 A. It was Harmonic Wealth Weekend.
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- 1 Q. Do you recall what year that was?
- 2 A. That would have been, I believe, 2006.
- 3 Q. Did you attend a subsequent event that
- 4 was a paid event?
- 5 A. Yes.
- 6 Q. What was that?
- 7 A. That was called "The Dreamer and the
- 8 Dream."
- 9 Q. Did you attend a subsequent event to
- 10 that?
- 11 A. No.
- 12 Q. Did you attend a -- something called a
- 13 Spiritual Warrior Seminar?
- 14 A. Yes, I did.
- 15 Q. When was that?
- 16 A. That was in September of 2008.
- 17 Q. Was that your third paid event of James
- 18 Ray that you attended?
- 19 A. That's correct.
- 20 Q. Do you recall how much you paid to attend
- 21 the Spiritual Warrior Seminar?
- 22 A. It was in the \$9,000 range. All costs
- 23 was over 20,000 for Vicky and I.
- 24 Q. The event -- the Spiritual Warrior event
- 25 took how many days?

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- 1 A. It was over a five-day period.
- 2 Q. And during that five-day period did you
- 3 participate in the event called the "Vision Quest"?
- 4 A. Yes, did I.
- 5 Q. Will you describe for the Court what that
- 6 was.
- 7 A. The Vision Quest was 36 hours out in a
- 8 circle that you created out in the desert. It was
- 9 the high dessert of the Sedona area. It was where
- 10 you would recapitulate and write about your
- 11 experiences. And it was done without any food or
- 12 water.
- 13 Q. What day of the Spiritual Warrior Seminar
- 14 did the Vision Quest occur on?
- 15 A. That occurred on a Wednesday.
- 16 Q. How many days into the event was this?
- 17 A. It was the third full day.
- 18 Q. How many days and nights were you out on
- 19 the Vision Quest?
- 20 A. One full day.
- 21 MR. KELLY: Excuse me, Your Honor. Again, I
- 22 know I've made this objection during the testimony
- 23 of the previous witness, but I ask the rhetorical
- 24 question, what does this have to do with 404(b) and
- 25 prior act evidence?

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- 1 THE COURT: I note the objection. Again, I've
- 2 addressed it. It's overruled.
- 3 You may continue, Ms. Polk.
- 4 Q. BY MS. POLK: What was your answer to how
- 5 many?
- 6 A. It was 36 hours approximately all
- 7 together.
- 8 Q. Starting at approximately what time of
- 9 day or night?
- 10 A. It was about right around 12:00 o'clock
- 11 on the Tuesday, and we came back around 6:00 a.m.
- 12 on Thursday morning.
- 13 Q. When you say "12:00 o'clock," was that
- 14 noon or midnight?
- 15 A. It was midnight.
- 16 Q. During that time you had no food and no
- 17 water?
- 18 A. That's correct.
- 19 Q. What occurred, then, back at the retreat
- 20 center after 6:00 a.m. after you came back?
- 21 A. Well, we came back, and there was a
- 22 breakfast. They told us to eat lightly that day
- 23 because of what was coming that later afternoon.
- 24 Q. Did you know what was coming later that
- 25 afternoon?

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1 **A. I had heard something about a sweat**  
2 **lodge, but I wasn't fully informed.**

3 **Q.** Did the event itself inform you that the  
4 sweat lodge was coming?

5 **A. The event -- it was that afternoon that**  
6 **we were given the full details.**

7 **Q.** You said you had heard something earlier.  
8 Who did you hear that from?

9 **A. One of the participants. I don't**  
10 **remember who.**

11 **Q.** If you could distinguish between the  
12 official spokespeople for the event versus just  
13 hearing it casually, which one was it that you  
14 heard that maybe a sweat lodge was coming?

15 **A. I had never done a sweat lodge, so the**  
16 **person -- I wasn't fully informed until the James**  
17 **Ray people told me in the afternoon.**

18 **Q.** And tell The Court what were the events  
19 leading up to you learning officially that you were  
20 to do a sweat lodge ceremony?

21 **A. What were the events?**

22 **Q.** Yes. You told us you had breakfast?

23 **A. Right. Breakfast. And then we were in**  
24 **what is called the "Crystal Hall" and we were**  
25 **reviewing a lot of what he had gone over prior to**

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1 **that. And right prior to the going -- getting**  
2 **ready for the sweat lodge we were reviewing the**  
3 **movie The Last Samurai.**

4 **Q.** When were you officially told you were  
5 going into a sweat lodge?

6 **A. I would say around 2:00 o'clock in the**  
7 **afternoon.**

8 **Q.** What time did you go into the sweat  
9 lodge?

10 **A. About 3:00 o'clock.**

11 **Q.** Was there a briefing from James Ray  
12 before you went into the sweat lodge?

13 **A. There was a little bit of a briefing --**  
14 **yes -- telling us some safety rules as far as which**  
15 **direction you would enter and which one you would**  
16 **exit. Pretty brief. Some of the people asked**  
17 **questions. One of the ladies that asked the**  
18 **question was Tari Coffey. And she was pregnant at**  
19 **the time. And she asked James Ray if it was safe**  
20 **for her to go in the sweat lodge. And he answered**  
21 **absolutely.**

22 **Q.** What else did James Ray tell you about  
23 what to expect inside the sweat lodge?

24 **A. He had stated that it would be hot and**  
25 **that he had expressed how hot his sweat lodges are.**

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1 **He had expressed how that some of the local Indian**  
2 **folk, Native Americans, had come and said that it's**  
3 **not -- it's like not no sweat lodge anybody else**  
4 **has done. That type of thing.**

5 **Q.** It's like no sweat lodge like anyone else  
6 has done, referring to what?

7 **MR. KELLY:** Objection, Your Honor. Pure  
8 speculation.

9 **THE COURT:** Well, if Mr. Rock can answer that  
10 in a fashion what his basis for his answer would  
11 be, I would need to know that.

12 **Q.** BY MS. POLK: Do you know what was being  
13 referred to by that statement?

14 **A. What was being referred to is that it's**  
15 **hotter than any other sweat lodge that any of the**  
16 **local Native Americans had ever experienced or**  
17 **seen.**

18 **MR. KELLY:** Your Honor?

19 **THE COURT:** Mr. Kelly?

20 **MR. KELLY:** I understand the scope of  
21 Rule 104. But I would submit, Judge, we're far  
22 exceeding that when we get into levels of double  
23 and triple hearsay relating to far exceeding what  
24 any Native American may have experienced.

25 **THE COURT:** Well, for one thing, I think some  
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1 of this comes from what Mr. Ray is indicating.  
2 That's the testimony. So that takes away some of  
3 the hearsay aspect of it. But, Mr. Kelly,  
4 obviously you are going to be able to  
5 cross-examine. Right now it's not clear to me at  
6 all that there is any real basis for what Mr. Rock  
7 has said. Perhaps it will be -- there may be some  
8 elaboration. I don't know if that's what he's  
9 guessing at.

10 **Ms. Polk?**

11 **Q.** BY MS. POLK: Can you tell me and tell  
12 the Court what specifically you heard Mr. Ray say  
13 about the Native Americans and Mr. Ray's sweat  
14 lodge.

15 **A. What I heard Mr. Ray say is that he --**  
16 **the Native Americans had come and seen his sweat**  
17 **lodge and had stated to him and to others that this**  
18 **was the hottest sweat lodge they'd ever seen. It's**  
19 **like no other sweat lodge that any Native American**  
20 **would have experienced.**

21 **Q.** And that's what Mr. Ray told you and the  
22 other participants?

23 **A. That's what he told me and the other**  
24 **participants. He was -- in my opinion, he was**  
25 **boasting of how hot and how intense his sweat**

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1 lodges are.

2 Q. Did James Ray make any statements to you  
3 about the possibility of passing out or fainting  
4 inside the sweat lodge?

5 A. Yes, he did.

6 Q. What did he say?

7 A. He said don't worry about it. If you  
8 pass out, we'll drag you out after it's over.

9 Q. Did Mr. Ray make any statements to you  
10 and the other participants about the possibility of  
11 dying inside the sweat lodge?

12 A. Well, the whole Spiritual Warrior event  
13 was about death and rebirth.

14 Q. In what sense? What do you mean?

15 A. Well, death and rebirth as being the old  
16 self dying and the new self emerging.

17 Q. And specifically inside the sweat lodge  
18 did Mr. Ray make any comment to you and the other  
19 participants about that nobody has died inside the  
20 sweat lodge yet?

21 A. Yes. He said that.

22 Q. Tell the Court --

23 A. He said nobody has ever died in one of my  
24 sweat lodges yet is his answer to that.

25 Q. And that was part of the presweat lodge  
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1 briefing?

2 A. It was part of the presweat lodge  
3 briefing when we were in the Crystal Hall before we  
4 went down to the sweat lodge.

5 Q. Did Mr. Ray make any comments to the  
6 participants about what might cause you to pass out  
7 inside the sweat lodge?

8 A. Well, it was that we were going to enter  
9 an altered state because obviously the oxygen is at  
10 a lower level as the heat rises and that you might  
11 pass out, but that no one has ever died in one of  
12 his sweat lodges. So we'll just drag you out by  
13 the ankles when we are finished.

14 Q. Did Mr. Ray explain to you what he meant  
15 by using the term "altered state"?

16 A. Well, yeah. Because there was many, many  
17 different events during the course of that week  
18 that brought you to an altered state. The first  
19 one was the breathing technique that he used, which  
20 was to hyperventilate and to breath and over  
21 oxygenate your blood, which would bring you to an  
22 altered state, which would bring you to a higher  
23 level of being.

24 Q. Can I ask you to explain to the Court  
25 when you use the term "altered state" what do you

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1 mean?

2 A. What I mean by "altered state" is that  
3 it's like you go into a hallucinogenic state.  
4 Obviously you're not using any drugs. But you're  
5 using your body, your breathing, whether it is over  
6 oxygenating your blood or under oxygenating your  
7 blood.

8 Q. How did feel about going into the sweat  
9 lodge after that briefing?

10 A. I felt a little apprehensive, but I know  
11 that I know myself and that I was going to stay in  
12 there and experience it as long as I could. And if  
13 I chose to leave, I would leave.

14 Q. Did you feel safe going into it?

15 A. Yes. I did at the time.

16 Q. And what made you feel safe?

17 A. What made me feel safe was the other  
18 Dream Team members, his supporters that were there  
19 helping the people that were the participants and  
20 his staff and his casual demeanor about -- you know  
21 -- nobody has died yet. It's not that life  
22 threatening.

23 Q. Did Mr. Ray point out to you or explain  
24 to you the role of the Dream Team during the sweat  
25 lodge ceremony?

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1 A. He said that they would be there to  
2 assist you and help you if you needed help during  
3 the time you were in the sweat lodge.

4 Q. Did you then go into the sweat lodge?

5 A. Yes, I did.

6 Q. You told us it started around 3:00 p.m.?

7 A. Yes.

8 Q. Did you come out of that sweat lodge --  
9 we're talking about 2008 still -- at some point?

10 A. Yes, I did.

11 Q. Tell us what happened and what made you  
12 come out.

13 A. After two rounds it started to get  
14 really, really hot, and I got to be very  
15 uncomfortable, and I was closer to the center,  
16 which is the pit. And I felt uncomfortable that I  
17 couldn't stay in there any longer. So I came out  
18 after the third round.

19 Q. What did you do once you got out?

20 A. Once I got out, they hosed me down with  
21 water. I was able to recoup. And I felt fine.  
22 And then after that the next round I went back in.

23 Q. Do you recall what round it was when you  
24 went back in?

25 A. I was in for the fifth round. So I

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1 skipped a round.

2 Q. And then how many more rounds were there?

3 A. I believe there was seven or eight  
4 rounds.

5 Q. When you went back in around the fifth  
6 round, did you have a different position inside the  
7 sweat lodge?

8 A. Yes, I did.

9 Q. How did that position compare to the  
10 position you had when you first were in there?

11 A. It wasn't as hot because I was more  
12 against the wall. And at that time I had seen  
13 other people were laying down face down. So I laid  
14 face down, and it was easier to stay in there.

15 Q. Were fewer people in the sweat lodge at  
16 that time?

17 A. Yes, there were.

18 Q. About how many fewer would you say?

19 A. I would say probably about a third of the  
20 group was out.

21 Q. At some point did you become aware of  
22 Sheryl Stern and what she was doing with respect to  
23 the sweat lodge?

24 A. Yeah. Because when I was out, she was  
25 actually helping people come in and out of the

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1 sweat lodge.

2 Q. And let me just back up a little bit.  
3 Explain to the Court who Sheryl Stern was.

4 A. Sheryl Stern is one of James Ray's  
5 employees. And she had been him for quite some  
6 time. She had entered the sweat lodge with all of  
7 us but at some point had come out and then was  
8 going in and out of the sweat lodge.

9 Q. How was she helping people?

10 A. She was watching over them, making sure  
11 they were getting out safely, keeping away from the  
12 center pit where the fire is, or the hot rocks I  
13 should say.

14 Q. Once Sheryl Stern went out, did she go  
15 back in?

16 A. She was only going in and out between  
17 rounds, from what I could tell.

18 Q. And what was she doing inside between  
19 rounds?

20 A. Between rounds she was -- like I said,  
21 she would assist people in helping them get out and  
22 whoever it appeared -- whoever needed help she was  
23 helping.

24 Q. Did you become aware at some point of  
25 something Sheryl Stern was doing to the flaps or

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1 the edges of the sweat lodge itself?

2 A. What I did become aware of was -- is that  
3 when I went back in after the second time I left, I  
4 was laying down between Jennifer Wong and Tari  
5 Coffey. And they were lifting the edge of the  
6 sweat lodge to get oxygen in.

7 Q. And let me have you explain that to the  
8 Court. Where were Jennifer and Tari when they were  
9 lifting the edge? Were they inside the out?

10 A. They were inside the sweat lodge. And  
11 they were laying down face down. And as it would  
12 get hotter and hotter, they would just use their  
13 hand and lift the edge up a little bit. And they  
14 were the ones that showed me how to do that.  
15 That's where I learned. And I came to learn later  
16 that the person that told them to do that was  
17 Sheryl Stern.

18 Q. Was that something that could be done  
19 openly inside the sweat lodge?

20 A. It was done in such a manner that people  
21 weren't noticing it.

22 Q. Was there a reason why people should not  
23 notice it?

24 A. At that time, no. I didn't understand if  
25 there was or wasn't.

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1 Q. Later did you come to understand more  
2 about that?

3 MR. KELLY: Your Honor?

4 THE WITNESS: Yes, I did. In 2009.

5 THE COURT: Mr. Kelly?

6 MR. KELLY: Object on the basis of lack of  
7 foundation. And again we're going in multiple  
8 levels of hearsay.

9 THE COURT: Let me return to the last part  
10 about how hot the sweat lodge might have been and  
11 what some Native Americans might have said.

12 And, Ms. Polk, I'm not going to consider  
13 that for the truth of the matter asserted  
14 whatsoever. I'm not going to do that.

15 I thought, Mr. Kelly, your objection on  
16 that point had to do with Mr. Rock's just  
17 interpretation of nothing else like it or something  
18 to that effect and did that mean hotter or not. I  
19 thought you were talking about that. I'm not going  
20 to consider this hearsay for the truth of what's  
21 asserted.

22 Ms. Polk, in this if you're offering this  
23 for the truth of the matter asserted, I would ask  
24 for more foundation.

25 MS. POLK: Judge, I'm not. I'm just trying to  
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1 establish the background leading up to my next  
2 question, then.

3 Q. In 2008 Mr. Rock -- in 2008 were you  
4 lifting the side of the sweat lodge when you were  
5 inside?

6 A. Yes.

7 Q. When did that occur?

8 A. **It happened in the last two rounds that I**  
9 **was in the sweat lodge.**

10 Q. Why did you do that?

11 A. **Because it helped me to stay in the sweat**  
12 **lodge, and it gave me the little bit of oxygen that**  
13 **I needed to continue and finish the event.**

14 Q. Did you do it at a certain time in  
15 relationship to the opening of the flap?

16 A. **That would be 2009.**

17 Q. And in 2008 did you do it at any time  
18 then?

19 A. **I followed. I was following. I don't**  
20 **recall, and I was following Jennifer and Tari's**  
21 **lead.**

22 MR. KELLY: Objection. Foundation. He  
23 doesn't recall.

24 THE COURT: Sustained.

25 Q. BY MS. POLK: Did you, Mr. Rock, in 2008  
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1 while you were inside lift the flap or the edge of  
2 the sweat lodge coverings while the ceremony itself  
3 was going on?

4 A. Yes.

5 Q. About how many times did you do that  
6 would you say?

7 A. **Maybe five or six.**

8 Q. Why did you do that?

9 A. **I did that because I felt that I needed**  
10 **the oxygen so that I could stay in the sweat lodge**  
11 **until the end.**

12 Q. In 2008 did you become aware of certain  
13 individuals who appeared to be in some state of  
14 distress?

15 A. Yes.

16 Q. If you recall in order, who was the first  
17 person you became aware of?

18 A. **The first person I became aware of was**  
19 **Barb Waters. Because after I got out of the sweat**  
20 **lodge, I seen them drag her out of the sweat lodge**  
21 **and carry her to a golf cart and bring her, I**  
22 **assume, back to her room.**

23 Q. You stayed in the sweat lodge in 2008 to  
24 the end?

25 A. Yes.

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1 Q. After leaving and going back in?

2 A. Yes.

3 Q. When the ceremony was over, you left?

4 A. **I came out of the sweat lodge.**

5 Q. Do you know when you came out where was  
6 Barbara Waters?

7 A. **When I came out initially, she was still**  
8 **in the sweat lodge.**

9 Q. Do you know how she got out of there?

10 A. **I know from people telling me that they**  
11 **carried her out.**

12 MR. KELLY: Objection, Your Honor. Move to  
13 strike everything after "people telling me".

14 THE COURT: I don't believe, Mr. Kelly,  
15 that -- again, I encourage the parties to make  
16 objections if you want to alert your concern with  
17 the validity of the testimony. It's hearsay. I  
18 understand that. It will be given weight  
19 accordingly.

20 You may continue.

21 Overruled.

22 Q. BY MS. POLK: Did you see Barbara Waters  
23 being brought out of the sweat lodge?

24 A. **I saw her being picked up and put on a**  
25 **golf cart. And she was passed out. She wasn't**  
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1 awake.

2 Q. When you saw her picked up, was she  
3 already outside?

4 A. Yes.

5 Q. Do you have any recollection today as to  
6 how people became aware that Barbara Waters was  
7 still inside the sweat lodge?

8 A. **From what I recall, it was some of the**  
9 **people that were on the outside of the sweat lodge**  
10 **that didn't go in the sweat lodge or had left the**  
11 **sweat lodge in the early rounds and never gone back**  
12 **that went in and found her.**

13 Q. When you saw her being picked up and put  
14 onto the golf cart, describe to the Court what you  
15 observed about her condition.

16 A. **What I observed about her condition is**  
17 **that she needed three people to pick her up and her**  
18 **body was limp. And I didn't see anything besides**  
19 **that. She was completely limp.**

20 Q. After she was taken away did you see her  
21 again in the next couple of hours?

22 A. Yes.

23 Q. Where was that?

24 A. **I saw her from a distance. It was in her**  
25 **cabin, which is called the Orange House. And my**

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1 wife was staying in there. So I had gone in there.  
 2 And she was laying in a bed. And people were  
 3 attending to her. At that time she wasn't  
 4 coherent. She wasn't passed out any longer, but  
 5 she wasn't really coherent about her wits.

6 Q. Do you know where James Ray was when you  
 7 saw others pick up Barbara Waters and put her on  
 8 golf cart?

9 A. James Ray had left.

10 Q. Do you know when it was that he left  
 11 after the end of the sweat lodge ceremony?

12 A. It was shortly after I got out of the  
 13 sweat lodge. I seen him for couple minutes. He  
 14 got in the golf cart, and one of his assistants  
 15 drove him away.

16 Q. Were other participants in the sweat  
 17 lodge leaving at the same time that James Ray was?

18 A. No.

19 Q. What's your observation about the other  
 20 participants after the sweat lodge ceremony?

21 A. The other participants in 2008 were  
 22 gathered about. Some of them were by the fire. It  
 23 was warming a little bit. A lot of them were  
 24 drinking water. The people -- Angel Valley had  
 25 brought watermelon down. People were eating

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1 watermelon. They were recouping. They were  
 2 getting their wits about them again, that type of  
 3 thing.

4 Q. Did you observe other people in various  
 5 stages of distress?

6 A. Yes, I did.

7 Q. Tell The Court what else you saw.

8 A. I saw another -- one of the other ladies.  
 9 I can't remember her name right now. I can just  
 10 picture her. She was short with dark, curly hair.  
 11 She wasn't coherent. She was walking with aid from  
 12 others. And later that evening when the closing  
 13 event was, she had come to it. She wasn't able to  
 14 eat any dinner, that type of thing.

15 Q. Were you alarmed by any of what you saw?

16 A. In 2008 I assumed it was normal because I  
 17 was told it was normal by James Ray.

18 Q. Had you done a sweat lodge previous to  
 19 2008 with James Ray?

20 A. I've never done a sweat lodge in my life  
 21 with anyone.

22 Q. In 2009 did you come back to Angel Valley  
 23 Retreat Center for another Spiritual Warrior  
 24 Seminar?

25 A. Yes, I did.

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1 Q. In what capacity?

2 A. I came back as a volunteer, which was  
 3 part of James Ray's Dream Team.

4 Q. Did you have to pay to be part of that  
 5 Dream Team?

6 A. I had to pay my -- for me to stay there  
 7 and, of course, my air fair there and back.

8 Q. What do you mean you had to pay for you  
 9 to stay there?

10 A. I had to pay Angel Valley to rent the  
 11 room that I was in and for the food I was eating.  
 12 It was a package deal of so much per day. And  
 13 then, of course, my air fair back and forth.

14 Q. Did you pay anything to James Ray?

15 A. No.

16 Q. What was the role? What is a Dream Team  
 17 member?

18 A. My role as a Dream Team member, being  
 19 only the second time I had done that, was to assist  
 20 and help out and be guided by the people that work  
 21 for James Ray.

22 Q. Did you receive training from James Ray?

23 A. Not from James Ray at all. No. Just  
 24 instruction from his assistant, Megan.

25 Q. In 2009 as a Dream Team member did you  
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1 participate in all of the events of the Spiritual  
 2 Warrior Seminar?

3 A. As a participant? No. I was there to  
 4 assist the people that were the participants.

5 Q. Did you participate, for example, in the  
 6 dream quest in 2009 -- the Vision Quest in 2009?

7 A. No.

8 Q. Did you participate in the sweat lodge  
 9 ceremony in 2009?

10 A. Yes, I did.

11 Q. What was your role?

12 A. My role I was given by James's people,  
 13 which was Megan, was that I was to be in the north,  
 14 which turned out to really be the west in the sweat  
 15 lodge. And I was the keeper of the north. And I  
 16 was there to hold space for the participants and do  
 17 the best I could.

18 Q. What does that mean, to hold space for  
 19 the participants?

20 A. To hold space is to keep positive energy  
 21 and thoughts for the people that are in the sweat  
 22 lodge with me at all times.

23 Q. Were you present for the briefing, the  
 24 presweat lodge briefing in 2009?

25 A. Yes.

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1 Q. You described for the Court the sequence  
2 of events from the Vision Quest to breakfast to  
3 coming to the Crystal Hall?

4 A. Right.

5 Q. Then to the briefing?

6 A. Yes.

7 Q. How did what happened in 2008 compare to  
8 what happened in 2009 in terms of the sequence of  
9 those events?

10 A. In the sequence of those events -- from  
11 the Vision Quest are you asking?

12 Q. Yes.

13 A. From the Vision Quest it was -- the  
14 difference was that it was colder. The elements  
15 were harsher.

16 Q. In two thousand and --

17 A. 2009. It was warmer in 2008. It rained  
18 on the participants a little bit in 2009. The  
19 energy from the people was way different. The  
20 people in 2009 were very what I call testosterone,  
21 high testosterone, very driven, less thoughtful to  
22 some of the teachings that James Ray had taught in  
23 2008 and the participants of 2008 had experienced.

24 Q. And then in terms of the getting  
25 breakfast and coming to the Crystal Hall for the  
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1 briefing, was that similar?

2 A. It was similar. Yes.

3 Q. Did you participate or listen to the  
4 briefing given by James Ray?

5 A. Yes.

6 Q. The presweat lodge briefing in 2009?

7 A. Yes.

8 Q. What things did Mr. Ray say in 2009 to  
9 the participants prior to going into the sweat  
10 lodge?

11 A. He said that -- a lot of the same stuff  
12 he said in 2008. He said that it was -- nobody's  
13 ever died yet. Don't worry about it. All the same  
14 things I said about 2008 he said.

15 He didn't give any specific instructions  
16 as far as how to manage yourself in the sweat lodge  
17 other than the safety issues of moving clockwise  
18 through the sweat lodge and that type of thing.

19 Q. Did Mr. Ray talk in 2009 about the heat  
20 inside the sweat lodge?

21 A. In 2009 he gave the same speech about how  
22 no one has ever seen a sweat lodge like James Ray  
23 does at Angel Valley and all the same guidance  
24 really.

25 Q. Did he make the same statement about no  
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1 one has ever died yet?

2 A. Yes, he did.

3 Q. In 2009 was the sweat lodge event also a  
4 surprise to the participants, as it had been in  
5 2008?

6 A. As surprised as -- yeah. I don't know if  
7 any of them -- how many of them might have known  
8 beforehand. But James Ray always tried to keep it  
9 a secret of what happened at each one of his  
10 events. He never wanted people from previous years  
11 to tell the people in the current year what was  
12 going to happen.

13 Q. Was Sheryl Stern there in 2009?

14 A. No, she was not.

15 Q. Did that surprise you?

16 A. It surprised me very much because I had  
17 just seen her previously in July and thought she  
18 was coming, and she wasn't there.

19 Q. About what time did the sweat lodge  
20 ceremony begin in 2009?

21 A. Right around it 2:30, 3:00 o'clock. Same  
22 as 2008.

23 Q. And did you go in at the beginning of it  
24 and take your position?

25 A. Yes, I did. I was probably the fourth  
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1 person in after James Ray and two of his staff  
2 members. And I think one other person was in front  
3 of me.

4 Q. Did you stay in the whole time?

5 A. Yes, I did.

6 Q. You told the Court you discussed how in  
7 2008 you learned how to lift the flap to get air?

8 A. That's correct.

9 Q. Did you do that in 2009?

10 A. Yes, I did.

11 Q. Approximately how many times?

12 A. Well, in 2009 I set my intention to be in  
13 the sweat lodge the whole time. So I was doing the  
14 best I could. And after about the third round I  
15 was laying face down again, and it was starting to  
16 get too hot, so I started to lift the tarp.

17 Q. And what happened?

18 A. At that point I -- somebody else from the  
19 other side of the sweat lodge had lifted the side  
20 of the sweat lodge, and light had come in. And  
21 they had lifted quite high. I experienced that  
22 light. And James Ray said that that was  
23 blasphemous and that that person should not do  
24 that.

25 Q. Did that affect -- for you did that  
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1 affect -- did you continue to raise the flap after  
2 that statement by James Ray about it being  
3 blasphemous?  
4 **A. I did. I waited until he opened the flap**  
5 **between rounds so that there was no way that he**  
6 **could see the light if I had lifted it. And I was**  
7 **also lifting it only probably about two to three**  
8 **inches off the ground, just enough to let some**  
9 **oxygen in.**

10 **Q.** Can you tell the Court, Mr. Rock -- and I  
11 don't want to have you go into details about Kirby  
12 Brown and James Shore.

13 **A. Okay.**

14 **Q.** But can you tell the Court, were you --  
15 was your position -- where was your position in the  
16 lodge with respect to Kirby Brown and James Shore?

17 **A. James Shore was to my left. He was two**  
18 **people away. And Kirby Brown was right next to**  
19 **him.**

20 **Q.** Were you -- was there a time when you  
21 lifted the flap in response to what you were  
22 observing with respect to those two individuals?

23 **A. No. No. I was lifting the flap between**  
24 **rounds so that I could get oxygen so that I could**  
25 **stay in there. Otherwise I felt I would have to**

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1 leave.

2 **Q.** And why did you not just leave?

3 **A. Because I had a responsibility I felt as**  
4 **a Dream Team member to hold my position, and I had**  
5 **also set my intention before I went in the sweat**  
6 **lodge to be in there the whole time and be there**  
7 **for the people that were in there and be able to**  
8 **get out of there to the best of my ability and help**  
9 **them when I got out. Because I knew they would**  
10 **need help.**

11 **Q.** In 2008 did you ever hear James Ray make  
12 statements about to encourage or discourage people  
13 from leaving the sweat lodge?

14 **A. In 2008 I would hear him occasionally say**  
15 **come back in or that type of thing a few times.**  
16 **Not very often.**

17 **Q.** And what about in 2009? What did you  
18 hear Mr. Ray say?

19 **A. In 2009 it seemed like he said it between**  
20 **every round from the fourth round on. And he would**  
21 **say things like you're better than that, and he**  
22 **would call people's names and ask them to come back**  
23 **in.**

24 **Q.** By the end of the sweat lodge ceremony in  
25 2009, do you have any idea how many people were

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1 still in?

2 **A. I would say probably half.**

3 **Q.** And how did that compare to 2008?

4 **A. In 2008 people came and left more**  
5 **frequently. So towards the end there was more**  
6 **people in there than that.**

7 **Q.** In which year were there more people?

8 **A. In 2008 at the end there was more people.**

9 **Q.** Than in 2009?

10 **A. Yes.**

11 **Q.** And why was that?

12 **A. Because they came and left. It was more**  
13 **revolving door, let's say, of people coming in and**  
14 **out.**

15 **Q.** In 2009 at some point did you become  
16 aware that people were in distress inside the sweat  
17 lodge?

18 **A. Yes. In 2009 it was towards the end. I**  
19 **started to hear Kirby Brown gurgling. I knew it**  
20 **was her gurgling because I heard somebody say that**  
21 **Kirby needs to get out. And I also heard James Ray**  
22 **say the flap is shut. We'll handle this after the**  
23 **round.**

24 **MR. KELLY:** Excuse me, Your Honor. Again, I  
25 note my earliest objection during this hearing.

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1 This should not be a minitrial on the 2009  
2 incident. And I see in no way this relates to the  
3 proffered 404(b) evidence during the years 2005  
4 through 2008.

5 And again, Judge, I mention that there  
6 are cameras here. I watched the news last night  
7 carefully, and I noticed in the statewide news  
8 there was no discussion about Terrazas and the  
9 standard of proof for the 404(b) hearing, but there  
10 were comments about recklessness and my client  
11 causing the deaths of these people.

12 The reason I submit that's important is  
13 it's necessary for this court to assist us in  
14 selecting a fair and impartial jury a mere three  
15 months from now. And what we're doing now is a  
16 minitrial in 2009. So I'd ask that any further  
17 testimony in regards to what happened in 2009 be  
18 precluded.

19 **MS. POLK:** Your Honor, may I respond?

20 **THE COURT:** You may.

21 **MS. POLK:** Your Honor, I am very carefully  
22 trying not to go into a lot of detail. This  
23 witness at trial will testify in much greater  
24 detail about the rounds and ultimately the events  
25 surrounding what he just said.

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1 What this court has already noted and  
2 what the law requires is that for the prior events  
3 to be found admissible under 404(b) and to be  
4 relevant, they have to be similar to what happens  
5 in 2009. And I'll make an offer of proof because  
6 you haven't heard testimony yet pertaining to Tere  
7 Ginerella, who was there in 2005.

8 MR. KELLY: Your Honor, I don't object to  
9 Ms. Polk making after offer of proof, but I do  
10 object that she makes it in front of witness.

11 MS. POLK: Judge, my point is that there will  
12 be testimony to come that will tie in Mr. Ray's  
13 response to the distress of Kirby Brown and his  
14 reaction and what he tells participants in 2009,  
15 that there is something similar in 2005. You heard  
16 about --

17 MR. KELLY: Your Honor, again, the witness is  
18 present.

19 THE COURT: There is a general description  
20 here. And Ms. Polk is pointing out the specific  
21 aspect of similarity. I'm going to ask at this  
22 time, Counsel, is that there be offers of proof. I  
23 think the defense is, basically, saying they're not  
24 going to say that this is not a contested issue.

25 And I believe the defense is recognizing,  
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1 Ms. Polk, that you do have to establish what the  
2 allegations consist of.

3 And I think Mr. Kelly you're willing to  
4 accept an offer of proof as to what this witness  
5 would say for that purpose.

6 MR. KELLY: For that limited purpose and the  
7 purpose of this hearing, absolutely.

8 THE COURT: Okay. Then I guess Mr. Kelly is  
9 also pointing out, Ms. Polk -- well, kind of this  
10 detailed instruction about what type of testimony  
11 someone might be listening to.

12 How many other areas were you going to  
13 cover with Mr. Rock?

14 MS. POLK: Judge, this is, essentially, it.  
15 He did give the answer. I wasn't going to go into  
16 further detail. I was responding to the suggestion  
17 that what he had to say about Mr. Ray's comments in  
18 2009 were not relevant. And my response is they  
19 are relevant because they are similar to testimony  
20 that the Court has yet to hear.

21 But I don't intend to go any further  
22 other than just have him generally describe the  
23 scene. And I don't need him to go into detail. I  
24 believe he made the one comment, I believe. There  
25 was an objection. He went ahead and said it. I

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1 don't know if the Court heard it.

2 THE COURT: I don't believe I did. I believe  
3 the objection process was starting. What I'm going  
4 to suggest, then, is cover the other area and then  
5 you can complete the offer of proof as soon as  
6 Mr. Rock is excused. So to make that clear, I want  
7 to make sure I get the answer.

8 MS. POLK: When do you get the answer from  
9 Mr. Rock?

10 THE COURT: We can find out what the answer  
11 is. But if you cover the other area in terms of  
12 more detail with regard to Kirby Brown or any type  
13 of offer of proof you want in that regard, we'll  
14 just do that before we leave.

15 MS. POLK: Okay. Then can the witness give  
16 his answer again?

17 THE COURT: To make sure, yes.

18 Q. BY MS. POLK: Mr. Rock, I asked you -- I  
19 can't remember what I asked you.

20 THE COURT: Well, Ms. Polk, that can be  
21 covered with the offer of proof. The defense said  
22 they're not going to contest that. I can consider  
23 that as true for purposes of deciding the 404(b).  
24 So that's something you can recite to me what the  
25 offer of proof will be on the point.

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1 MS. POLK: I can do it, Judge. But I'm not  
2 sure what his exact words would be.

3 THE COURT: So you're telling me you're not  
4 sure what the offer of proof would be?

5 MS. POLK: No. I know what my offer of proof  
6 is with respect to the other incidents that are  
7 similar to what happened in 2009. What I had asked  
8 Mr. Rock was he established that he is close in the  
9 sweat lodge to Kirby Brown, that a comment is made  
10 by somebody that she's not breathing. And then  
11 Mr. Ray said something. And I had asked Mr. Rock  
12 to tell the Court what it is that Mr. Ray said in  
13 response to being notified that Kirby Brown wasn't  
14 breathing.

15 You can answer that if you can.

16 THE WITNESS: James Ray's response was is that  
17 the gate is closed and we'll deal with that after  
18 this round. The gate, meaning the door, the entry  
19 to the sweat lodge.

20 Q. BY MS. POLK: Thank you. You don't need  
21 to go into detail, then, Mr. Rock about the scene  
22 once the sweat lodge ceremony was over -- I just  
23 want to ask you were there people in various stages  
24 of distress when it was over?

25 A. Yes.

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1 Q. And was that similar to what had happened  
 2 in 2008?  
 3 A. It was beyond that.  
 4 Q. Beyond that in what respect?  
 5 A. Beyond that that there was people laying  
 6 all over the place on the ground and not very  
 7 responsive.  
 8 MS. POLK: May I have a moment, Your Honor?  
 9 THE COURT: Yes.  
 10 MS. POLK: I have nothing further, Your Honor.  
 11 THE COURT: Thank you.  
 12 MS. POLK: Thank you. Thank you, Mr. Rock.  
 13 CROSS-EXAMINATION  
 14 BY MR. KELLY:  
 15 Q. Mr. Rock, I'm putting on the monitor  
 16 what's been admitted as Exhibit No. 62.  
 17 A. Excuse me. Whom I'm speaking with?  
 18 THE COURT: Mr. Kelly, you may proceed --  
 19 Q. BY MR. KELLY: Mr. Rock, I'm putting on  
 20 the monitor what's been admitted as Exhibit No. 62.  
 21 This is a photograph of the Spiritual Warrior event  
 22 in 2008 -- do you recognize the person in that  
 23 photograph?  
 24 A. That's Tari Coffey.  
 25 Q. You told us on direct that Miss Coffey  
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1 was pregnant; correct?  
 2 A. Yes, she was.  
 3 Q. And you were implying that somehow this  
 4 event would be dangerous to her physical condition;  
 5 correct?  
 6 A. I stated that she asked James Ray if the  
 7 fact that she was pregnant, if she would be okay  
 8 doing the sweat lodge event.  
 9 Q. Does she look okay here in Exhibit 64?  
 10 A. And he said yes.  
 11 Q. Did you hear my question?  
 12 A. No, I didn't.  
 13 Q. Does she look okay in this exhibit?  
 14 A. She looks just fine.  
 15 Q. Now, Mr. Rock, earlier today I saw you in  
 16 the hallway with a stack of paper and a yellow  
 17 highlighter. You were reading something; correct?  
 18 A. That's correct.  
 19 Q. What were you reading?  
 20 A. I was reading notes.  
 21 Q. Notes from what?  
 22 A. My notes from 2008.  
 23 Q. Whose notes? Specifically, did you write  
 24 the notes you were reading?  
 25 A. No, I did not.  
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1 Q. Who wrote the notes?  
 2 A. The person that wrote the notes was  
 3 Julia.  
 4 Q. And how did you obtain a copy of the  
 5 notes?  
 6 A. She sent me a copy of the notes.  
 7 Q. Why were you reviewing them before your  
 8 testimony?  
 9 A. I was looking at the notes because I  
 10 wanted to know what Julia had written.  
 11 Q. And before -- do you recall your  
 12 testimony -- or excuse me -- your statement  
 13 provided to Detective Diskin on September 21, 2010?  
 14 A. The what?  
 15 Q. The statement, the interview.  
 16 A. What interview?  
 17 Q. Do you remember being interviewed by  
 18 detective Diskin?  
 19 A. By who?  
 20 Q. Do you have problems with memory?  
 21 A. I have problems with hearing you because  
 22 you're mumbling.  
 23 Q. Okay. Do you have problems with memory  
 24 is my question?  
 25 A. No, I don't.  
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1 Q. Pardon me?  
 2 A. No, I don't.  
 3 Q. Do you remember being interviewed by  
 4 Detective Diskin in September 21, 2010?  
 5 A. September 21, 2010. Yes.  
 6 Q. Do you recall that?  
 7 A. Yes.  
 8 Q. Do you see Detective Diskin in the  
 9 courtroom?  
 10 A. He's right there.  
 11 Q. Was a transcript of that interview  
 12 contained in the notes that you had in the hallway?  
 13 A. No.  
 14 Q. Where are the notes that you had in the  
 15 hallway?  
 16 A. They're still in the hallway.  
 17 MR. KELLY: Your Honor, I'd ask for a break so  
 18 that we can retrieve those notes.  
 19 THE COURT: Ms. Polk?  
 20 MS. POLK: Your Honor, I have no objection.  
 21 Although, I don't know the purpose. I don't know  
 22 why we're discussing notes being confrontational.  
 23 MR. KELLY: Judge, I'd like to ask one more  
 24 question, please. And then I'll explain the  
 25 relevance.

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1 Q. Prior to making the statement to  
2 Detective Diskin on September 21, 2010, you had  
3 reviewed the transcript of Sheryl Stern; correct?

4 A. I had seen a transcript of Sheryl  
5 Stern's. Yes.

6 MR. KELLY: Judge, now I would like to be able  
7 to review the notes that this witness reviewed  
8 prior to his testimony to assist in  
9 cross-examination. Obviously the issue in this  
10 particular Terrazas hearing is whether or not the  
11 state can meet it's burden by clear and convincing  
12 evidence. And if the testimony of the witness is  
13 primarily based on witness statements of others,  
14 that's an important consideration for this court to  
15 know.

16 THE COURT: Ms. Polk indicated she wasn't  
17 objecting in any event. And it was something that  
18 was reviewed right before the testimony and  
19 apparently covered the same time frame and the  
20 events, I guess.

21 Ms. Polk?

22 MS. POLK: Well, Judge, first of all it's not  
23 clear to me -- Mr. Kelly hasn't really established  
24 with this witness what he was looking at. He  
25 agreed that he was looking at -- I think I heard

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1 the witness agreed at some point he reviewed the  
2 report by Sheryl Stern. He stated that he did --  
3 in the hallway he was looking at notes by Julia.

4 But beyond that I don't know what else he  
5 was looking at. I don't know if he had with him  
6 private papers. I don't know what the authority is  
7 for Mr. Kelly to demand that all the papers that  
8 the witness was looking at out in the hallway  
9 suddenly be produced for Mr. Kelly to review.

10 I think first he needs to establish what  
11 else was there and then what the reason why he  
12 would want to see. And furthermore, Judge, all  
13 these documents have been disclosed. I'm not sure  
14 why we're talking about retrieving reports from the  
15 hallway.

16 MR. KELLY: Judge, if all these documents have  
17 been disclosed, I have no objection. My request is  
18 that it's my understanding from this witness's  
19 testimony that there may be additional documents  
20 that have not been disclosed. And the basis of my  
21 authority is Rule 15. And we wouldn't know until  
22 we looked at his notes.

23 THE COURT: That could be an issue of --  
24 disclosure issue with the other thing I was just  
25 thinking about. For purposes of this hearing,

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1 Mr. Kelly, I might have missed the question, but  
2 whether or not this is the type of material that  
3 would refresh your recollection. In any event --  
4 which would entitle you to look at it right now in  
5 any event. It doesn't have to be someone's own  
6 notes to be an item that refreshes recollection.  
7 Normally that is something the other party could  
8 look at.

9 MR. KELLY: Judge, I agree. And I have been  
10 provided as an example notes prepared by presumably  
11 Julia, Bates stamped 2394 through 2398 from the  
12 State of Arizona. There is nothing in this note  
13 and there are many statements attributed to my  
14 client in these notes which were taken -- and  
15 they're entitled "Spiritual Warrior 2008 Notes".

16 There is nothing in this note that's  
17 consistent with the testimony of this witness. I  
18 don't know whether he has some additional notes or  
19 not. And if this is the scope -- and, Judge, I'll  
20 avow to the Court when I walked by Mr. Rock, he had  
21 a rather thick stack of paper. It was much thicker  
22 than the three or four pages I have in my hand.

23 THE COURT: Ms. Polk, are you familiar with  
24 the document Mr. Kelly is holding right now?

25 MS. POLK: Yes, Judge. The state -- these are  
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1 the notes that were taken by Julia Bunker. They  
2 have been referred to by the previous witness. She  
3 said that she had reviewed them and that they were,  
4 in fact, accurate. I believe these are the notes  
5 that this witness is referring to.

6 These notes were disclosed to the state.  
7 The state has made full disclosure of everything we  
8 have in our position. I would also note that on  
9 line a lot of information is available, and that  
10 appears to be how Vicky Rock got these notes.

11 I disagreed with the statement by Mr. Ray  
12 that this witness's testimony is not consistent  
13 with these notes. I would disagree with that.

14 Judge, I just don't understand the rule  
15 that Mr. Kelly is citing that all of a sudden in  
16 cross-examination he gets to start demanding papers  
17 from a witness. If he wants to go through and  
18 establish that this witness has looked at things  
19 related to the case, he needs to ask this witness  
20 what have you reviewed.

21 But to demand all his private papers and  
22 start going through them on some fishing  
23 expedition, his belief that the state has not made  
24 full disclosure, we are far afield from proper  
25 cross-examination.

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1 MR. KELLY: Judge, on the record I have to  
2 expound -- this is far from a fishing expedition.  
3 When the man comes in here and he says he reviewed  
4 some notes, we don't know the contents of the  
5 notes. And due process requires me to be prepared  
6 for cross-examination. That is not a fishing  
7 expedition.

8 THE COURT: What I want to know from Mr. Rock,  
9 Mr. Kelly, is whether he reviewed these documents  
10 in preparation for his testimony in this hearing.

11 MR. KELLY: Judge, I apologize for my emotion.  
12 And I believe I asked and I thought he answered  
13 that he had.

14 THE COURT: And I indicated I may have missed  
15 it. But I want to clear that up. I'll just ask  
16 Mr. Rock.

17 Did you review this information that  
18 Mr. Kelly has been referring to -- did you review  
19 that information in preparation for your testimony  
20 in this hearing?

21 THE WITNESS: Yes, I did.

22 THE COURT: Then I believe Mr. Kelly gets to  
23 look at whatever information Mr. Rock referred to.

24 Ms. Polk?

25 MS. POLK: Again, Judge, I think -- I don't  
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1 know what else the witness had with him. Mr. Kelly  
2 is demanding all the notes be brought in. I agreed  
3 whatever this witness reviewed in preparation for  
4 testimony is proper subject for cross-examination.

5 But I don't even think we've gotten that  
6 far to establish everything that -- he jumped from  
7 establishing that the witness had looked at Sheryl  
8 Stern's statement and Julia Bunker to demanding all  
9 the notes that are out in the hallway.

10 THE COURT: Mr. Kelly, could you continue with  
11 Mr. Rock these basic questions. Go ahead.

12 MR. KELLY: Okay. I will.

13 Q. Mr. Rock, you, of course, have had the  
14 opportunity to sit here and listen to this  
15 discussion; correct?

16 A. Yes.

17 Q. And the discussion centers around the  
18 contents of the notes in the hallway; correct?

19 A. Yes, it does.

20 Q. Where did you get those documents?

21 A. I was emailed them by Julia Bunker.

22 They're the notes from the 2008 Spiritual Warrior  
23 that she created because she created notes at that  
24 event.

25 Q. And when I walked past you before  
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1 lunch --

2 A. Yes.

3 Q. And I'm approximating, sir. But you had  
4 a stack of papers of considerable thickness, much,  
5 much more than the three or four pages that  
6 Ms. Polk has in her hands; correct?

7 A. I had -- it's actually 40 pages.

8 Q. Okay. 40 pages.

9 MR. KELLY: May I approach the witness?

10 THE COURT: Yes, you may.

11 MR. KELLY: Mr. Rock --

12 And this is not marked as an exhibit,  
13 Judge.

14 THE COURT: It can be.

15 Q. BY MR. KELLY: The papers that we're  
16 looking at, do you see down here on the bottom a  
17 stamp?

18 A. Uh-huh.

19 Q. It's something that's referred to as a  
20 "Bates stamp." Do you see how each page is  
21 sequentially numbered?

22 A. Yup. I see them.

23 Q. Now, do the 40 pages out in the hallway  
24 have these Bates stamped on them?

25 A. No.

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1 Q. Now, Judge, I'd renew my request.

2 THE COURT: I believe that should be marked,  
3 Mr. Kelly. If there is an extra copy.

4 Ms. Polk, it's been referred to.

5 MR. KELLY: Judge, for the record, and I  
6 believe Ms. Polk will agree to this avowal, that  
7 the disclosure from the State of Arizona from page  
8 No. 1 through everything they've given us is Bates  
9 stamped sequentially.

10 THE COURT: Ms. Polk?

11 MS. POLK: It is, Judge. But we discussed the  
12 entire set of Julia Bunker notes. It's not the  
13 three pages that Mr. Kelly is waving around. In  
14 fact, it is 40 pages. It goes through Bates stamp  
15 No. 2421. I don't remember what number it began  
16 with.

17 THE COURT: 127.

18 Mr. Kelly, Ms. Polk has avowed that this  
19 40-page document from Julia, her notes have been  
20 provided.

21 MR. KELLY: Judge, with all due respect, if  
22 the notes in the hallway are not Bates stamped, how  
23 would she know? How would anyone know?

24 THE COURT: We're going to need to straighten  
25 this matter out. I certainly hope we could have

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1 testimony through the time, through the day. But  
2 we're going to need to look at the records it  
3 appears.

4 Ms. Polk, you have a disclosure  
5 obligation. Obviously you're aware of that. But  
6 if -- there may be documents out there that --  
7 well.

8 MR. KELLY: What I would suggest, Judge, is  
9 Miss Durrer is here. She probably knows this file  
10 as well as anyone. And I have no objection to  
11 Miss Durrer making a comparison between the Bates  
12 stamped Julia's notes and the documents in the  
13 hallway and advising Mr. Li, Ms. Do and myself of  
14 the result.

15 THE COURT: Ms. Polk?

16 MS. POLK: I'll accept that offer. May I voir  
17 dire the witness briefly?

18 THE COURT: You may do that.

19 VOIR DIRE EXAMINATION

20 BY MS. POLK:

21 Q. Mr. Rock, other than the approximately  
22 40 -- I don't do math on the fly, but looks like  
23 maybe 48 pages that were Julia Bunker's notes, is  
24 there anything else that's in the hallway that you  
25 were looking at?

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1 A. Just a bass fishing magazine.

2 Q. Did you make personal notes on --

3 A. Yes, I did.

4 Q. -- Julia Bunker notes?

5 A. I made my own personal notes.

6 MS. POLK: Thank you.

7 THE COURT: We're going to have to recess for  
8 the day.

9 MR. KELLY: Judge, given the fact there is  
10 personal notes, my request now would be  
11 that simply copy them and provide a copy to us for  
12 our review. And we're not interested in the bass  
13 magazine.

14 THE COURT: Okay. Then we will recess for the  
15 day.

16 Mr. Rock, I've told all the witnesses  
17 this so far. I thought we might have the hearing  
18 completed today. Apparently it will continue. So  
19 I have to make sure you understand this rule of  
20 exclusion of witnesses that has been invoked for  
21 purposes of this hearing.

22 And as I've had to tell other witnesses  
23 with husband and wife situations, there is a  
24 problem and obviously there is a temptation to talk  
25 about what's going on. But you just have to avoid

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1 that until this hearing is completed. It's  
2 scheduled to resume on the 16th. And it should be  
3 completed at that time.

4 But until it is completed, you can't talk  
5 about your testimony or the case with any other  
6 witness in this hearing at all. You can talk to  
7 the lawyers, though. You can do that. You can  
8 speak with the lawyers but you can't talk to other  
9 witnesses about the case and your testimony until  
10 it's done, probably next week some time.

11 Do you understand that?

12 THE WITNESS: Yes, I do.

13 THE COURT: Okay. Then, sir, I will go ahead  
14 and excuse you at this time. You may want to wait  
15 just a minute. I'm going to talk to the attorneys  
16 just a bit, just about the records. So if you  
17 could wait out in the hallway there for a moment,  
18 I'd appreciate it. Thank you.

19 (The witness leaves the room.)

20 THE COURT: Anything else you want to take up  
21 before we recess?

22 MS. POLK: Well, Judge, the way it was left is  
23 that my paralegal would examine the notes, verify  
24 that they are, in fact, the same notes that we  
25 previously disclosed to the defense.

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1 Then Mr. Kelly made a request that the  
2 personal notes of this witness be copied and  
3 disclosed. And I just question whether or not  
4 Mr. Kelly is entitled to the personal notes made by  
5 this witness on that same document.

6 I'm looking at Rule 15.1(b). And the  
7 prosecutor's obligation is to make available to the  
8 defendant the following material and information  
9 within the prosecutor's possession or control. And  
10 those notes are not in our possession or control.  
11 I'm just not sure under what theory suddenly the  
12 privacy of this witness gets to be invaded by the  
13 defense team.

14 MR. KELLY: Judge.

15 MS. POLK: Again, Judge, I haven't seen the  
16 notes. I don't really know what we're talking  
17 about. But I'm just being sensitive to this  
18 particular witness and wondering under what theory  
19 suddenly he has to disclose his personal notes.

20 And I would note again for the Court that  
21 the notes that we're talking about apparently were  
22 put on line by one the witnesses. They've been out  
23 there and they're available. It's not the state  
24 who gave this information to the Rocks.

25 And my staff just reminds me that those  
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1 notes were sent out before the 2009 sweat lodge  
2 event. So they're notes -- Julia Bunker took notes  
3 during 2008, posted them on line, sent them out  
4 before the 2009 sweat lodge event.

5 MR. KELLY: Judge.

6 THE COURT: Yes.

7 MR. KELLY: If my motion or request was based  
8 on a failure of the State of Arizona to disclose,  
9 that would have been the argument. What it's based  
10 on is under 15(g) that in preparation for this  
11 hearing or trial the defense is going to need to  
12 obtain those notes. We can do it.

13 Mr. Rock gave me the skunk eyes as he was  
14 leaving the courtroom. It's just more  
15 uncomfortable -- he seems to be a little more  
16 cooperative with the State of Arizona. But I'll  
17 guarantee you, I'll go out and get those notes,  
18 make a copy, give a copy to Ms. Polk.

19 In regards to some privacy issue, I don't  
20 understand. My client is charged with serious  
21 crimes. He's entitled present a defense as  
22 prepared, and we don't know what those notes say.  
23 If somehow they're privileged, I trust that  
24 Ms. Polk and the defense team will not disclose  
25 those without further order of the Court.

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1 But if they have cryptic notes such as I  
2 don't remember this or et cetera, then we're  
3 entitled to know that. Of course, we're  
4 speculating now because we haven't seen the notes.  
5 I don't know of any privilege that would exist at  
6 this point in time that would prevent us from  
7 seeing what this man's notes are and to assist us  
8 in possible impeachment and cross-examination.

9 THE COURT: Not an issue I've dealt with that  
10 I can recall.

11 MS. POLK: Nor I, Judge. And that's why I'm  
12 looking to the rules for guidance. And I don't see  
13 under what rule suddenly a witness's personal  
14 notes, why they would become it.

15 THE COURT: I understand Mr. Kelly's argument,  
16 though. There is a substantial need. The witness  
17 has testified, has read some material and made some  
18 notes on the material itself.

19 But I interrupted you, Ms. Polk. Go  
20 ahead and finish.

21 MS. POLK: What I was just going to point to,  
22 15.1(g), and question where the substantial need  
23 is. Mr. Kelly started to cross-examine,  
24 immediately jumped into the notes, immediately  
25 demanded the notes from the hallway. I'm just not

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1 sure what the substantial need is. He really  
2 hasn't cross-examined the witness about anything  
3 yet.

4 MR. KELLY: Your Honor.

5 THE COURT: Yes.

6 MR. KELLY: I have confronted this issue with  
7 regard to your comments and actually have been  
8 present on several occasions where witnesses take  
9 their notes to the witness stand and copies are  
10 made in the courtroom for both parties. And this  
11 is no different except for the fact the notes are  
12 in the hallway.

13 THE COURT: Well, I don't have any question at  
14 all about getting notes that people are using on  
15 the stand. And whether they have them with them or  
16 they reviewed them before they came in, I don't  
17 have any issue with that. It's, I guess, really  
18 what is the -- might be the nature of the personal  
19 notes.

20 MR. KELLY: Judge.

21 THE COURT: You write a note and then you use  
22 it to review.

23 MR. KELLY: The final, Judge, alternative,  
24 which places an additional burden on the Court, is  
25 for you to inspect them in camera before disclosure

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1 to the defense and prosecution.

2 THE COURT: Well, I certainly want them  
3 preserved at this time in any event. Notes  
4 probably fit the definition of a statement under  
5 15.4(a)(1). The difference, as Ms. Polk says, the  
6 state doesn't technically have any control over  
7 that. So -- but if it's a witness statement the  
8 state does have control over, that's disclosed.

9 This just comes under the 15.1(g). So it  
10 probably is discoverable subject to Mr. Rock's  
11 right if there is some type of privileged,  
12 unrelated information there to have a protective  
13 order on that. He might not have any issue with  
14 this. We might just be talking about this -- I get  
15 the feeling he's not particularly concerned with  
16 turning the notes over.

17 So why don't we check on that. I've  
18 asked him to wait. And what I'm going to do,  
19 Ms. Polk, if he does have some issue with this, I'm  
20 going to ask that you just preserve them at this  
21 time. And it may require an in-camera review at  
22 that point. I think that's the best way to proceed  
23 for today anyway.

24 MR. KELLY: Thank you, Judge.

25 THE COURT: And with regard to scheduling, the  
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1 court administration wanted to know if I can cover  
2 another matter on the 16th. It doesn't appear that  
3 that's going to be the case. I know we have a  
4 number of other motions to deal with. But I think  
5 the other motions are oral argument. I don't think  
6 there is any testimony anticipated on the another  
7 ones.

8 MS. POLK: That's correct. At least not from  
9 the state, Your Honor.

10 THE COURT: Okay. If somebody from the  
11 defense could address -- do you have any witnesses?

12 MR. LI: Your Honor, we're going to have to  
13 evaluate this. One of the issues -- and I'm not --  
14 I understand that the Court doesn't want to hear us  
15 argue about each other's communications.

16 But one of the issues is that originally  
17 the state intended to call Detective Diskin.  
18 Detective Diskin was going to testify about 21  
19 different witness statements and what have you. We  
20 had prepared for that, spent a considerable amount  
21 of time preparing for the cross-examination of  
22 that.

23 And then we were told this morning that  
24 Detective Diskin is not going to testify. And so  
25 we need to figure out where that leaves us.

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1 Because my understanding is that the new plan is  
2 for the state to just simply move in the audiotapes  
3 and the written statements of the various  
4 witnesses. And we need to figure out what that  
5 actually means if we can't cross-examine Diskin  
6 about them. And so I don't know yet, Your Honor.  
7 That's a long way of saying I'm not sure exactly.

8 THE COURT: And I don't have any issue. If  
9 you need to tell me about communications -- you  
10 know. I encourage communication as much as  
11 possible, hopefully having things worked out.

12 But are you thinking you might be calling  
13 the detective yourself?

14 MR. LI: We might. I just want to preserve  
15 our ability to do so. What happened is we prepared  
16 to cross-examine Detective Diskin about 21  
17 different witness statements that he was going to  
18 introduce. We probably looked at just about every  
19 other witness statement that there was so we could  
20 impeach the various witness statements that  
21 Detective Diskin was going to bring into evidence.

22 And then this morning we were told no,  
23 we're not going to call Detective Diskin. So we  
24 spent all that time for no reason. And now we need  
25 to figure out, given the new sort of playing field

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1 we're working with and given the various offers of  
2 proof that we still haven't exactly understood that  
3 the state is making in terms of what we are  
4 actually trying to prove or disprove in this  
5 hearing, I just think we need to figure out whether  
6 we need to call a witness, what particular factual  
7 assertion the state is making that we need to  
8 rebut. You know. It's very difficult for us to  
9 identify that at this point. So we need to figure  
10 that out.

11 THE COURT: At least so far in this hearing  
12 the evidence has come in as evidence. Yes, there  
13 has been some hearsay. But I tried to make clear  
14 how that will be evaluated. There was one specific  
15 offer of proof that I noted that Ms. Polk made.  
16 And it had to do with the qualifications of the  
17 nurse. And that came in the form of an offer of  
18 proof.

19 I think you're also referring to what is  
20 going to be offered, which I anticipate --

21 MR. LI: What would make this -- I'm sorry,  
22 Your Honor.

23 THE COURT: Go ahead.

24 MR. LI: What would make this easier for all  
25 of us is if we could have a clear articulation of

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1 what the 2009 event -- the offer of proof of what  
2 the government seeks to prove in 2009 and an offer  
3 of proof of what this various testimony about 2003,  
4 2004, 2005, 2006, 2007, 2008, what it is exactly  
5 about those incidents that relates to the 2009  
6 incident so that we can know what we're fighting  
7 against.

8 What we have now -- and with all due  
9 respect, what we have now is we have a lot of  
10 testimony. There is a lot of different parts of  
11 the testimony. Some of it perhaps relevant, some  
12 of it perhaps not relevant. And we are -- you  
13 know -- to mix a lot of metaphors, shooting at a  
14 moving target. We're not sure what exactly we need  
15 to rebut.

16 So, for instance -- you know -- if the  
17 allegation is simply that in 2005 Mr. Ray acted  
18 purportedly recklessly and in 2009 he's now also  
19 acting recklessly, we would submit -- if that is  
20 the government's offer or theory of why this is  
21 admissible under 404(b), we would submit that's  
22 exactly propensity evidence and not admissible.

23 But we would want to know that that's the  
24 actual theory that the government is seeking to use  
25 to admit this various evidence. What we're having

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1 instead is a minitrial, a lot of information that's  
2 coming in. And we don't know exactly what it is  
3 that we need to rebut.

4 And so to the extent we need to put on  
5 evidence to rebut some of the government's claims,  
6 we need to know actually what those claims are.  
7 Otherwise we simply have to put up a number -- we  
8 might have to put up a number of witnesses who were  
9 at these various events and who are going to  
10 testify well, it actually happened differently.

11 And so that's the problem we're having  
12 with this particular -- you know -- with evaluating  
13 what we're going to do on the 16th.

14 THE COURT: Except for the statements, the  
15 state has put all the evidence in at this point. I  
16 mean, Mr. Kelly is conducting cross. So there  
17 would be redirect.

18 Correct, Ms. Polk?

19 MS. POLK: Well, Your Honor, I had intended to  
20 call Detective Diskin. What the state has done is  
21 establish through live witnesses the events that  
22 occurred in 2005, 2007, 2008. And we have tried to  
23 discuss 2009 only to the extent that it ties into  
24 the 404(b) legal requirements.

25 We have in addition to that numerous  
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1 participants who have been interviewed from 2005,  
2 2007 and 2008. What I had intended to do  
3 originally was have Detective Diskin take the  
4 stand. And pursuant to Rule 104 (b) that allows  
5 reliable hearsay. To have him talk about the  
6 additional witnesses that he testified, that he  
7 interviewed, that bolster what was told to the  
8 Court by live witnesses.

9 After hearing the Court's comments  
10 yesterday, your comment that you give hearsay less  
11 weight, then I reevaluated that, and I've made the  
12 decision to offer, and you made the comment  
13 yesterday that you would accept offers of proof and  
14 that they are permissible under the Terrazas case.

15 I made the decision that rather than have  
16 the detective talk about approximately 20  
17 interviews and how it relates to the 404(b), I made  
18 the decision to make an offer of proof as to what  
19 each one of those participants would say if they  
20 testified and then to submit to the Court their  
21 statements that are both in the form of -- they've  
22 all been audiotape. And then in addition to that,  
23 almost all of them there are transcripts of them.

24 And I'm doing that based on the State  
25 versus LeBrun case, which the cite is 222 Ariz.

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1 183. And that case makes it clear that in  
2 evaluating whether or not other acts are admissible  
3 under 404(b), the Court can, in fact, rely upon  
4 unsworn statements of witnesses in lieu of hearing  
5 them testify.

6 THE COURT: Is that the 404(c) case? It's the  
7 same analysis. I was going to mention that to  
8 counsel. There is a fairly recent 404(C) case that  
9 indicates you don't have to have a hearing.

10 MS. POLK: It is that same case, Judge.

11 THE COURT: Okay. I'm familiar with that.  
12 404(c) has the same type of analysis. Terrazas  
13 applies there as well.

14 One thing that I remember from reading  
15 that case, though. It wasn't quite clear to me  
16 whether or not those statements were under oath.  
17 I've read the opinion a couple of times. And one  
18 part of the opinion it seems to indicate they are.  
19 I haven't looked at it for a while. I'll go back  
20 and look at it.

21 MS. POLK: Judge, they were not. The opinion  
22 says that they were unsworn statements by the  
23 witnesses.

24 THE COURT: I think it's one of those you can  
25 read the headnote, and you read the case, and it  
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1 doesn't quite seem to be a match. Anyway, I'm  
2 going to go back and look at it. We're talking  
3 about the same case. I could be wrong on that.

4 MR. LI: Your Honor, the other case, since  
5 we're talking about cases, would be State v.  
6 Aguilar. I'm looking for the cite right now. You  
7 know what. I might have it.

8 THE COURT: I know that case.

9 MR. LI: I think I actually have it on -- I  
10 think it's 209 Ariz. 40, 2004, which holds that the  
11 Court can read it and decide what it all --

12 So anyway, we need to evaluate -- we need  
13 to look at what we've gotten so far, what the offer  
14 of proof is from the state. And that will help us  
15 evaluate what sort of witnesses, if any, we're  
16 going to call on the 16th.

17 THE COURT: But the 20 statements all relate  
18 to October 2009?

19 MS. POLK: No. These are participants at the  
20 prior sweat lodge events.

21 THE COURT: All prior?

22 MS. POLK: Yes. From 2005. Actually, they  
23 are every year beginning with 2003 through 2008.

24 THE COURT: Okay. Nothing on 2009, then, in  
25 those statements. I know what we had discussed

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1 earlier was having offers of proof with regard to  
2 2009. But I think this other information can be  
3 considered.

4 But the defense -- have you had a chance  
5 to read these? Have you seen them all? Have you  
6 seen the statements?

7 MR. LI: Yes, Your Honor. I guess the  
8 challenge, Your Honor, is what specifically about  
9 the statements does the state or the Court think is  
10 the theory under which these particular prior acts  
11 are purportedly admissible so that we in briefing  
12 this can address those specific points.

13 Otherwise we have to guess at the many  
14 different theories we can come up with as to why  
15 the state thinks they might be admitted. That's  
16 the only reason -- that why we're asking for an  
17 offer of what the theory is exactly.

18 We heard a theory earlier about  
19 Mr. Pfankuch. So we now understand that particular  
20 theory. And there are other incidents. We just  
21 need to -- it will make things easier. It will  
22 make things flow a lot smoother. The briefing will  
23 be better. There won't be so much consternation on  
24 our side of the table. Hopefully it will be more  
25 efficient.

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1 THE COURT: That is something you can discuss.  
2 Otherwise I'm going to consider the evidence and  
3 just end up just being argument, Mr. Li, that you  
4 feel the state hasn't provided evidence that  
5 fits --

6 MR. LI: Well, we will make that argument.

7 THE COURT: If that's where it is --

8 MR. LI: We will make that argument.

9 THE COURT: -- I'll deal with that. I don't  
10 get any more involved than that. Obviously I'm  
11 going to hear evidence and argument or hear  
12 testimony, consider evidence and argument and go  
13 from there.

14 MR. LI: Then we'll make those various  
15 arguments, one of which is going to be that under  
16 Aguilar hearsay statements as a matter of law are  
17 not sufficient. It's not a question of  
18 admissibility. But the tactic that  
19 Detective Diskin sort of summarizing and handing in  
20 the grand jury -- actually, I don't know whether  
21 the state intends to offer the grand jury testimony  
22 of Detective Diskin. I forgot.

23 THE COURT: Is that part of the offer?

24 MS. POLK: Yes, Judge.

25 MR. LI: Okay. Well, in that particular case

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1 the Court found that the grand jury testimony was  
2 exactly the type of evidence that wasn't sufficient  
3 to use and was not particularly reliable in making  
4 the 404(b) determination. 404(c), I think.

5 THE COURT: Another thing. I want to comment  
6 on something Ms. Polk said. Sometimes hearsay can  
7 be reliable or more reliable. You just have to  
8 look at the various circumstances, corroboration,  
9 those kinds of things.

10 LeBrun I think you said the case name is.  
11 And I think that's what the Judge in Maricopa  
12 County said or found in that case is there was a  
13 lot of corroboration, and the court of appeals  
14 agreed with that.

15 MR. LI: Your Honor, if I may just address  
16 that one point very briefly. I've looked at almost  
17 every 404(b) case in Arizona that I can find. And  
18 they are all sort of very discrete acts that -- you  
19 know -- did somebody have nonconsensual sex with a  
20 victim or not. That's the prior act that's being  
21 dealt with. Was it with consent. Was it not. Did  
22 this person do some burglary or not. And there is  
23 a very specific act that's being defined.

24 And usually of all the cases, almost all  
25 of them the acts are crimes. And specific alleged

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1 bad acts, though not charged always, are --  
2 actually could be defined as crimes. And they're  
3 very specific. The act is very identifiable.

4 In this particular case we're not sure  
5 exactly what the act that Mr. Ray purportedly  
6 committed is. And that's the problem that we're  
7 having. Because if the act is simply that there  
8 was a sweat lodge ceremony -- and I don't know if  
9 that's the states theory. If that is the theory,  
10 then that's the target we'll shoot at.

11 If the act is some other thing, that he,  
12 essentially, committed a crime, that he was  
13 reckless in holding these prior sweat lodges, then  
14 we'll need to understand -- then that's the target  
15 we'll shoot at.

16 But our problem is we don't know exactly  
17 what act we're dealing with here and why these  
18 cases -- why this particular case is unique and why  
19 these -- all these other cases are not easily  
20 squared with this -- with our particular case is  
21 because the act in this case is, essentially,  
22 undefined.

23 There are a lot of -- there was a lot of  
24 evidence that came in today. And we just don't  
25 know exactly what act we are seeking to disprove.

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1 I'm sorry. Is that making any sense at  
2 all, Your Honor?

3 THE COURT: Mr. Li, I've commented before  
4 about the act. Yes. I understand. And I -- as  
5 I'm telling you, I'm not going to get involved in  
6 how somebody presents the case. There will be an  
7 argument. The evidence has about been presented.  
8 I understand there are these statements going to be  
9 offered, and you may have objections. So we'll see  
10 where that goes.

11 But yes. I understand the concept. And  
12 normally they talk about a prior act or sometimes a  
13 bad act. But it's not necessarily a bad act.  
14 Often it is a discrete event or occurrence that  
15 we're talking about. Yes, I very much understand  
16 what you're saying.

17 MR. LI: I wasn't asking -- I was hoping I was  
18 being clear. That's all.

19 THE COURT: Yes. You were.

20 I know we asked Mr. Rock to stay so we  
21 can take care of the documents. But this time  
22 we've set aside for these hearings, that's been in  
23 place for a long time. And I just want to check  
24 before -- if we aren't going to use the time on the  
25 16th, something else I needed to do. But this is

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1 the priority clearly. And we have the whole day on  
2 the 16th. I have one matter in the morning. I'll  
3 try to time that with the break or just have it  
4 reset.

5 Anything else?

6 MS. POLK: At 9:00 a.m. on the 16th?

7 THE COURT: Yes. Let's do that.

8 MR. LI: Thank you, Your Honor.

9 (The proceedings concluded.)

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1 STATE OF ARIZONA )  
2 COUNTY OF YAVAPAI ) ss: REPORTER'S CERTIFICATE

3  
4 I, Mina G. Hunt, do hereby certify that I  
5 am a Certified Reporter within the State of Arizona  
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings  
8 were taken in shorthand by me at the time and place  
9 herein set forth, and were thereafter reduced to  
10 typewritten form, and that the foregoing  
11 constitutes a true and correct transcript.

12 I further certify that I am not related  
13 to, employed by, nor of counsel for any of the  
14 parties or attorneys herein, nor otherwise  
15 interested in the result of the within action.

16 In witness whereof, I have affixed my  
17 signature this 19th day of February, 2012.

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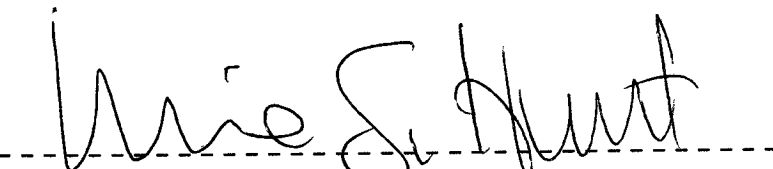
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